CHAPTER 3. SPECIAL PROCEEDINGS AND ACTIONS

MICHIGAN COURT RULES OF 1985

Subchapter 3.000 General Provisions

Rule 3.001 Applicability

The rules in this chapter apply in circuit court and in other courts as provided by law or by these rules.

Subchapter 3.100 Debtor-Creditor

Rule 3.101 Garnishment After Judgment

(A) Definitions. In this rule,

(1) "plaintiff" refers to any judgment creditor,

(2) "defendant" refers to any judgment debtor,

(3) "garnishee" refers to the garnishee defendant,

(4) "periodic payments" includes but is not limited to, wages, salary, commissions, bonuses, and other income paid to the defendant during the period of the writ; land contract payments; rent; and other periodic debt or contract payments. Interest payments and other payments listed in MCL 600.4012(4)(a)-(d) are not periodic payments.

(B) Postjudgment Garnishments.

(1) Periodic garnishments are garnishments of periodic payments, as provided in this rule.

(a) Unless otherwise ordered by the court, a writ of periodic garnishment served on a garnishee who is obligated to make periodic payments to the defendant is effective until the first to occur of the following events:

(i) the amount withheld pursuant to the writ equals the amount of the unpaid judgment, interest, and costs stated in the verified statement in support of the writ;

(ii) the expiration of 91 days after the date the writ was issued;

(iii) the plaintiff files and serves on the defendant and the garnishee a notice that the amount withheld exceeds the remaining unpaid judgment, interest, and costs, or that the judgment has otherwise been satisfied.

(b) The plaintiff may not obtain the issuance of a second writ of garnishment on a garnishee who is obligated to make periodic payments to the defendant while a prior writ served on that garnishee remains in effect relating to the same judgment. The plaintiff may seek a second writ after the first writ expires under subrule (B)(1)(a).

(c) If a writ of periodic garnishment is served on a garnishee who is obligated to make periodic payments to the defendant while another order that has priority under MCL 600.4012(2) is in effect, or if a writ or order with higher priority is served on the garnishee while another writ is in effect, the garnishee is not obligated to withhold payments pursuant to the lower priority writ until the expiration of the higher priority one. However, in the case of garnishment of earnings, the garnishee shall withhold pursuant to the lower priority writ to the extent that the amount being withheld pursuant to the higher priority order is less than the maximum that could be withheld by law pursuant to the lower priority writ (see, e.g., 15 USC

1673). Upon the expiration of the higher priority writ, the lower priority one becomes effective until it would otherwise have expired under subrule (B)(1)(a). The garnishee shall notify the plaintiff of receipt of any higher priority writ or order and provide the information required by subrule (H)(2)(c).

(2) Nonperiodic garnishments are garnishments of property or obligations other than periodic payments.

(C) Forms. The state court administrator shall publish approved forms for use in garnishment proceedings. Separate forms shall be used for periodic and nonperiodic garnishments. The verified statement, writ, and disclosure filed in garnishment proceedings must be substantially in the form approved by the state court administrator.

(D) Request for and Issuance of Writ. The clerk of the court that entered the judgment shall issue a writ of garnishment if the plaintiff, or someone on the plaintiff's behalf, makes and files a statement verified in the manner provided in MCR 2.114(A) stating:

(1) that a judgment has been entered against the defendant and remains unsatisfied;

(2) the amount of the judgment and the amount remaining unpaid;

(3) that the person signing the verified statement knows or has good reason to believe that

(a) a named person has control of property belonging to the defendant,

(b) a named person is indebted to the defendant, or

(c) a named person is obligated to make periodic payments to the defendant.

(E) Writ of Garnishment.

(1) The writ of garnishment must have attached or must include a copy of the verified statement requesting issuance of the writ, and must include information that will permit the garnishee to identify the defendant, such as the defendant's address, social security number, employee identification number, federal tax identification number, employer number, or account number, if known.

(2) Upon issuance of the writ, it shall be served upon the garnishee as provided in subrule (F)(1). The writ shall include the date on which it was issued and the last day by which it must be served to be valid, which is 91 days after it was issued.

(3) The writ shall direct the garnishee to:

(a) serve a copy of the writ on the defendant as provided in subrule (F)(2);

(b) within 14 days after the service of the writ, file with the court clerk a verified disclosure indicating the garnishee's liability (as specified in subrule [G][1]) to the defendant and mail or deliver a copy to the plaintiff and the defendant;

(c) deliver no tangible or intangible property to the defendant, unless allowed by statute or court rule;

(d) pay no obligation to the defendant, unless allowed by statute or court rule; and

(e) in the discretion of the court and in accordance with subrule (J), order the garnishee either to

(i) make all payments directly to the plaintiff or

(ii) send the funds to the court in the manner specified in the writ.

(4) The writ shall direct the defendant to refrain from disposing of

(a) any negotiable instrument representing a debt of the garnishee (except the earnings of the defendant), or

(b) any negotiable instrument of title representing property in which the defendant claims an interest held in the possession or control of the garnishee.

(5) The writ shall inform the defendant that unless the defendant files objections within 14 days after the service of the writ on the defendant,

(a) without further notice the property or debt held pursuant to the garnishment may be applied to the satisfaction of the plaintiff's judgment, and

(b) periodic payments due to the defendant may be withheld for as long as 91 days after the issuance of the writ and in the discretion of the court paid directly to the plaintiff.

(6) The writ shall direct the plaintiff to serve the garnishee as provided in subrule (F)(1), and to file a proof of service.

(F) Service of Writ.

(1) The plaintiff shall serve the writ of garnishment, a copy of the writ for the defendant, the disclosure form, and any applicable fees, on the garnishee within 91 days after the date the writ was issued in the manner provided for the service of a summons and complaint in MCR 2.105.

(2) The garnishee shall within 7 days after being served with the writ deliver a copy of the writ to the defendant or mail a copy to the defendant at the defendant's last known address by first class mail.

(G) Liability of Garnishee.

(1) Subject to the provisions of the garnishment statute and any setoff permitted by law or these rules, the garnishee is liable for

(a) all tangible or intangible property belonging to the defendant in the garnishee's possession or control when the writ is served on the garnishee, unless the property is represented by a negotiable document of title held by a bona fide purchaser for value other than the defendant;

(b) all negotiable documents of title and all goods represented by negotiable documents of title belonging to the defendant if the documents of title are in the garnishee's possession when the writ is served on the garnishee;

(c) all corporate share certificates belonging to the defendant in the garnishee's possession or control when the writ is served on the garnishee;

(d) all debts, whether or not due, owing by the garnishee to the defendant when the writ is served on the garnishee, except for debts evidenced by negotiable instruments or representing the earnings of the defendant;

(e) all debts owing by the garnishee evidenced by negotiable instruments held or owned by the defendant when the writ of garnishment is served on the defendant, as long as the instruments are brought before the court before their negotiation to a bona fide purchaser for value;

(f) the portion of the defendant's earnings that are not protected from garnishment by law (see, e.g., 15 USC 1673) as provided in subrule (B);

(g) all judgments in favor of the defendant against the garnishee in force when the writ is served on the garnishee;

(h) all tangible or intangible property of the defendant that, when the writ is served on the garnishee, the garnishee holds by conveyance, transfer, or title that is void as to creditors of the defendant, whether or not the defendant could maintain an action against the garnishee to recover the property; and

(i) the value of all tangible or intangible property of the defendant that, before the writ is served on the garnishee, the garnishee received or held by conveyance, transfer, or title that was void as to creditors of the defendant, but that the garnishee no longer held at the time the writ was served, whether or not the defendant could maintain an action against the garnishee for the value of the property.

(2) The garnishee is liable for no more than the amount of the unpaid judgment, interest, and costs as stated in the verified statement requesting the writ of garnishment. Property or debts exceeding that amount may be delivered or paid to the defendant notwithstanding the garnishment.

(H) Disclosure. The garnishee shall mail or deliver to the court, the plaintiff, and the defendant, a verified disclosure within 14 days after being served with the writ.

(1) Nonperiodic Garnishments.

(a) If indebted to the defendant, the garnishee shall file a disclosure revealing the garnishee's liability to the defendant as specified in subrule (G)(1) and claiming any setoff that the garnishee would have against the defendant, except for claims for unliquidated damages for wrongs or injuries.

(b) If not indebted to the defendant, the garnishee shall file a disclosure so indicating.

(2) Periodic Garnishments.

(a) If not obligated to make periodic payments to the defendant, the disclosure shall so indicate, and the garnishment shall be considered to have expired.

(b) If obligated to make periodic payments to the defendant, the disclosure shall indicate the nature and frequency of the garnishee's obligation. The information must be disclosed even if money is not owing at the time of the service of the writ.

(c) If a writ or order with a higher priority is in effect, in the disclosure the garnishee shall specify the court that issued the writ or order, the file number of the case in which it was issued, the date it was issued, and the date it was served.

(I) Withholding. This subrule applies only if the garnishee is indebted to or obligated to make periodic payments to the defendant.

(1) Except as otherwise provided in this subrule, the writ shall be effective as to obligations owed and property held by the garnishee as of the time the writ is served on the garnishee.

(2) In the case of periodic earnings, withholding shall commence according to the following provisions:

(a) For garnishees with weekly, biweekly, or semimonthly pay periods, withholding shall commence with the first full pay period after the writ was served.

(b) For garnishees with monthly pay periods, if the writ is served on the garnishee within the first 14 days of the pay period, withholding shall commence on the date the writ is served. If the writ is served on the garnishee on or after the 15th day of the pay period, withholding shall commence the first full pay period after the writ was served.

(3) In the case of periodic earnings, withholding shall cease according to the following provisions:

(a) For garnishees with weekly, biweekly, or semimonthly pay periods, withholding shall cease upon the end of the last full pay period prior to the expiration of the writ.

(b) For garnishees with monthly pay periods, withholding shall continue until the writ expires.

(4) At the time that a periodic payment is withheld, the garnishee shall provide the following information to the plaintiff and defendant:

(a) the name of the parties;

(b) the case number;

(c) the date and amount withheld;

(d) the balance due on the writ.

The information shall also be provided to the court if funds are sent to the court.

(5) If funds have not been withheld because a higher priority writ or order was in effect, and the higher priority writ ceases to be effective before expiration of the lower priority one, the garnishee shall begin withholding pursuant to the lower priority writ as of the date of the expiration of the higher priority writ.

(J) Payment.

(1) After 28 days from the date of the service of the writ on the garnishee, the garnishee shall transmit all withheld funds to the plaintiff or the court as directed by the court pursuant to subrule (E)(3)(e) unless notified that objections have been filed.

(2) For periodic garnishments, all future payments shall be paid as they become due as directed by the court pursuant to subrule (E)(3)(e) until expiration of the garnishment.

(3) Upon receipt of proceeds from the writ, the court shall forward such proceeds to the plaintiff.

(4) Payment to the plaintiff may not exceed the amount of the unpaid judgment, interest, and costs stated in the verified statement requesting the writ of garnishment. If the plaintiff claims to be entitled to a larger amount, the plaintiff must proceed by motion with notice to the defendant.

(5) In the case of earnings, the garnishee shall maintain a record of all payment calculations and shall make such information available for review by the plaintiff, the defendant, or the court, upon request.

(6) For periodic garnishments, within 14 days after the expiration of the writ or after the garnishee is no longer obligated to make periodic payments, the garnishee shall file with the court and mail or deliver to the plaintiff and the defendant, a final statement of the total amount paid on the writ. If the garnishee is the defendant's employer, the statement is to be filed within 14 days after the expiration of the writ, regardless of changes in employment status during the time that the writ was in effect. The statement shall include the following information:

(a) the names of the parties and the court in which the case is pending;

(b) the case number;

(c) the date of the statement;

(d) the total amount withheld;

(e) the difference between the amount stated in the verified statement requesting the writ and the amount withheld.

(7) If the disclosure states that the garnishee holds property other than money belonging to the defendant, the plaintiff must proceed by motion (with notice to the defendant and the garnishee) to seek an appropriate order regarding application of the property to satisfaction of the judgment. If there are no pending objections to the garnishment, and the plaintiff has not filed such a motion within 56 days after the filing of the disclosure, the garnishment is dissolved and the garnishee may release the property to the defendant.

(K) Objections.

(1) Objections shall be filed with the court within 14 days of the date of service of the writ on the defendant. Objections may be filed after the time provided in this subrule but do not suspend payment pursuant to subrule (J) unless ordered by the court. Objections may only be based on defects in or the invalidity of the garnishment proceeding itself, and may not be used to challenge the validity of the judgment previously entered.

(2) Objections shall be based on one or more of the following:

(a) the funds or property are exempt from garnishment by law;

(b) garnishment is precluded by the pendency of bankruptcy proceedings;

(c) garnishment is barred by an installment payment order;

(d) garnishment is precluded because the maximum amount permitted by law is being withheld pursuant to a higher priority garnishment or order;

(e) the judgment has been paid;

(f) the garnishment was not properly issued or is otherwise invalid.

(3) Within 7 days of the filing of objections, notice of the date of hearing on the objections shall be sent to the plaintiff, the defendant, and the garnishee. The hearing date shall be within 21 days of the date the objections are filed. In district court, notice shall be sent by the court. In circuit and probate court, notice shall be sent by the objecting party.

(4) The court shall notify the plaintiff, the defendant, and the garnishee of the court's decision.

(L) Steps After Disclosure; Third Parties; Interpleader; Discovery.

(1) Within 14 days after service of the disclosure, the plaintiff may serve the garnishee with written interrogatories or notice the deposition of the garnishee. The answers to the interrogatories or the deposition testimony becomes part of the disclosure.

(2) If the garnishee's disclosure declares that a named person other than the defendant and the plaintiff claims all or part of the disclosed indebtedness or property, the court may order that the claimant be added as a defendant in the garnishment action under MCR 2.207. The garnishee may proceed under MCR 3.603 as in interpleader actions, and other claimants may move to intervene under MCR 2.209.

(3) The discovery rules apply to garnishment proceedings.

(4) The filing of a disclosure, the filing of answers to interrogatories, or the personal appearance by or on behalf of the garnishee at a deposition does not waive the garnishee's right to question the court's jurisdiction, the validity of the proceeding, or the plaintiff's right to judgment.

(M) Determination of Garnishee's Liability.

(1) If there is a dispute regarding the garnishee's liability or if another person claims an interest in the garnishee's property or obligation, the issue shall be tried in the same manner as other civil actions.

(2) The verified statement acts as the plaintiff's complaint against the garnishee, and the disclosure serves as the answer. The facts stated in the disclosure must be accepted as true unless the plaintiff has served interrogatories or noticed a deposition within the time allowed by subrule (L)(1) or another party has filed a pleading or motion denying the accuracy of the disclosure. Except as the facts stated in the verified statement are admitted by the disclosure, they are denied. Admissions have the effect of admissions in responsive pleadings. The defendant and other claimants added under subrule (L)(2) may plead their claims and defenses as in other civil actions. The garnishee's liability to the plaintiff shall be tried on the issues thus framed.

(3) Even if the amount of the garnishee's liability is disputed, the plaintiff may move for judgment against the garnishee to the extent of the admissions in the disclosure. The general motion practice rules govern notice (including notice to the garnishee and the defendant) and hearing on the motion.

(4) The issues between the plaintiff and the garnishee will be tried by the court unless a party files a demand for a jury trial within 7 days after the filing of the disclosure, answers to interrogatories, or deposition transcript, whichever is filed last. The defendant or a third party waives any right to a jury trial unless a demand for a jury is filed with the pleading stating the claim.

(5) On the trial of the garnishee's liability, the plaintiff may offer the record of the garnishment proceeding and other evidence. The garnishee may offer evidence not controverting the disclosure, or in the discretion of the court, may show error or mistakes in the disclosure.

(6) If the court determines that the garnishee is indebted to the defendant, but the time for payment has not arrived, a judgment may not be entered until after the time of maturity stated in the verdict or finding.

(N) Orders for Installment Payments.

(1) An order for installment payments under MCL 600.6201 *et eq.* suspends the effectiveness of a writ of garnishment of periodic payments for work and labor performed by the defendant from the time the order is served on the garnishee. An order for installment payments does not suspend the effectiveness of a writ of garnishment of nonperiodic payments or of an income tax refund or credit.

(2) If an order terminating the installment payment order is entered and served on the garnishee, the writ again becomes effective and remains in force until it would have expired if the installment payment order had never been entered.

(O) Judgment and Execution.

(1) Judgment may be entered against the garnishee for the payment of money or the delivery of specific property as the facts warrant. A money judgment against the garnishee may not be entered in an amount greater than the amount of the unpaid judgment, interest, and costs as stated in the verified

statement requesting the writ of garnishment. Judgment for specific property may be enforced only to the extent necessary to satisfy the judgment against the defendant.

(2) The judgment against the garnishee discharges the garnishee from all demands by the defendant for the money paid or property delivered in satisfaction of the judgment. If the garnishee is sued by the defendant for anything done under the provisions of these garnishment rules, the garnishee may introduce as evidence the judgment and the satisfaction.

(3) If the garnishee is chargeable for specific property that the garnishee holds for or is bound to deliver to the defendant, judgment may be entered and execution issued against the interest of the defendant in the property for no more than is necessary to satisfy the judgment against the defendant. The garnishee must deliver the property to the officer serving the execution, who shall sell, apply, and account as in other executions.

(4) If the garnishee is found to be under contract for the delivery of specific property to the defendant, judgment may be entered and execution issued against the interest of the defendant in the property for no more than is necessary to satisfy the judgment against the defendant. The garnishee must deliver the property to the officer serving the execution according to the terms of the contract. The officer shall sell, apply, and account as in ordinary execution.

(5) If the garnishee is chargeable for specific property and refuses to expose it so that execution may be levied on it, the court may order the garnishee to show cause why general execution should not issue against the garnishee. Unless sufficient cause is shown to the contrary, the court may order that an execution be issued against the garnishee in an amount not to exceed twice the value of the specifically chargeable property.

(6) The court may issue execution against the defendant for the full amount due the plaintiff on the judgment against the defendant. Execution against the garnishee may not be ordered by separate writ, but must always be ordered by endorsement on or by incorporation within the writ of execution against the defendant. The court may order additional execution to satisfy the plaintiff's judgment as justice requires.

(7) Satisfaction of all or part of the judgment against the garnishee constitutes satisfaction of a judgment to the same extent against the defendant.

(P) Appeals. A judgment or order in a garnishment proceeding may be set aside or appealed in the same manner and with the same effect as judgments or orders in other civil actions.

(Q) Receivership.

(1) If on disclosure or trial of a garnishee's liability, it appears that when the writ was served the garnishee possessed,

(a) a written promise for the payment of money or the delivery of property belonging to the defendant, or

(b) personal property belonging to the defendant,

the court may order the garnishee to deliver it to a person appointed as receiver.

(2) The receiver must

(a) collect the written promise for payment of money or for the delivery of property and apply the proceeds on any judgment in favor of the plaintiff against the garnishee and pay any surplus to the garnishee, and

(b) dispose of the property in an amount greater than any encumbrance on it can be obtained, and after paying the amount of the encumbrance, apply the balance to the plaintiff's judgment against the garnishee and pay any surplus to the garnishee.

(3) If the garnishee refuses to comply with the delivery order, the garnishee is liable for the amount of the written promise for the payment of money, the value of the promise for the delivery of property, or the value of the defendant's interest in the encumbered personal property. The facts of the refusal and the valuation must be included in the receiver's report to the court.

(4) The receiver shall report all actions pertaining to the promise or property to the court. The report must include a description and valuation of any property, with the valuation to be ascertained by appraisal on oath or in a manner the court may direct.

(R) Costs and Fees.

(1) Costs and fees are as provided by law or these rules.

(2) If the garnishee is not indebted to the defendant, does not hold any property subject to garnishment, and is not the defendant's employer, the plaintiff is not entitled to recover the costs of that garnishment.

(S) Failure to Disclose or to Do Other Acts; Default; Contempt.

(1) If the garnishee fails to disclose or do a required act within the time limit imposed, a default may be taken as in other civil actions. A default judgment against a garnishee may not exceed the amount of the garnishee's liability as provided in subrule (G)(2).

(2) If the garnishee fails to comply with the court order, the garnishee may be adjudged in contempt of court.

(3) In addition to other actions permitted by law or these rules, the court may impose costs on a garnishee whose default or contempt results in expense to other parties. Costs imposed shall include reasonable attorney fees and shall not be less than $100.

(T) Judicial Discretion. On motion the court may by order extend the time for:

(1) the garnishee's disclosure;

(2) the plaintiff's filing of written interrogatories;

(3) the plaintiff's filing of a demand for oral examination of the garnishee;

(4) the garnishee's answer to written interrogatories;

(5) the garnishee's appearance for oral examination; and

(6) the demand for jury trial.

The order must be filed with the court and served on the other parties.

Rule 3.102 Garnishment Before Judgment

(A) Availability of Prejudgment Garnishment.

(1) After commencing an action on a contract, the plaintiff may obtain a prejudgment writ of garnishment under the circumstances and by the procedures provided in this rule.

(2) Except as provided in subrule (A)(3), a prejudgment garnishment may not be used

(a) unless the defendant is subject to the jurisdiction of the court under chapter 7 of the Revised Judicature Act, MCL 600.701 *et seq*.;

(b) to garnish a defendant's earnings; or

(c) to garnish property held or an obligation owed by the state or a governmental unit of the state.

(3) This rule also applies to a prejudgment garnishment in an action brought to enforce a foreign judgment. However, the following provisions apply:

(a) The defendant need not be subject to the court's jurisdiction;

(b) The request for garnishment must show that

(i) the defendant is indebted to the plaintiff on a foreign judgment in a stated amount in excess of all setoffs;

(ii) the defendant is not subject to the jurisdiction of the state, or that after diligent effort the plaintiff cannot serve the defendant with process; and

(iii) the person making the request knows or has good reason to believe that a named person

(A) has control of property belonging to the defendant, or

(B) is indebted to the defendant.

(c) Subrule (H) does not apply.

(B) Request for Garnishment. After commencing an action, the plaintiff may seek a writ of garnishment by filing an ex parte motion supported by a verified statement setting forth specific facts showing that:

(1) the defendant is indebted to the plaintiff on a contract in a stated amount in excess of all setoffs;

(2) the defendant is subject to the jurisdiction of the state;

(3) after diligent effort the plaintiff cannot serve the defendant with process; and

(4) the person signing the statement knows or has good reason to believe that a named person

(a) has control of property belonging to the defendant, or

(b) is indebted to the defendant.

On a finding that the writ is available under this rule and that the verified statement states a sufficient basis for issuance of the writ, the judge to whom the action is assigned may issue the writ.

(C) Writ of Garnishment. The writ of garnishment must have attached or include a copy of the verified statement, and must:

(1) direct the garnishee to:

(a) file with the court clerk within 14 days after the service of the writ on him or her a verified disclosure indicating his or her liability (as specified in subrule [E]) to the defendant;

(b) deliver no tangible or intangible property to the defendant, unless allowed by statute or court rule;

(c) pay no obligation to the defendant, unless allowed by statute or court rule; and

(d) promptly provide the defendant with a copy of the writ and verified statement by personal delivery or by first class mail directed to the defendant's last known address;

(2) direct the defendant to refrain from disposing of any negotiable instrument representing a debt of the garnishee or of any negotiable instrument of title representing property in which he or she claims an interest held in the possession or control of the garnishee;

(3) inform the defendant that unless the defendant files objections within 14 days after service of the writ on the defendant, or appears and submits to the jurisdiction of the court, an order may enter requiring the garnishee to deliver the garnished property or pay the obligation to be applied to the satisfaction of the plaintiff's claim; and

(4) command the process server to serve the writ and to file a proof of service.

(D) Service of Writ. MCR 3.101(F) applies to prejudgment garnishment.

(E) Liability of Garnishee. MCR 3.101(G) applies to prejudgment garnishment except that the earnings of the defendant may not be garnished before judgment.

(F) Disclosure. The garnishee shall file and serve a disclosure as provided in MCR 3.101(H).

(G) Payment or Deposit Into Court. MCR 3.101(I) and (J) apply to prejudgment garnishment, except that payment may not be made to the plaintiff until after entry of judgment, as provided in subrule (I).

(H) Objection; Dissolution of Prejudgment Garnishment. Objections to and dissolution of a prejudgment garnishment are governed by MCR 3.101(K) and MCR 3.103(H).

(I) Proceedings After Judgment.

(1) If the garnishment remains in effect until entry of judgment in favor of the plaintiff against the defendant, the garnished property or obligation may be applied to the satisfaction of the judgment in the manner provided in MCR 3.101(I), (J), (M), and (O).

(2) MCR 3.101(P) and (Q) and MCR 3.103(I)(2) apply to prejudgment garnishment.

(J) Costs and Fees; Default; Contempt; Judicial Discretion. MCR 3.101(R), (S), and (T) apply to prejudgment garnishment.

Rule 3.103 Attachment

(A) Availability of Writ. After commencing an action, the plaintiff may obtain a writ of attachment under the circumstances and by the procedures provided in this rule. Except in an action brought on a foreign judgment, attachment may not be used unless the defendant is subject to the jurisdiction of the court under chapter 7 of the Revised Judicature Act. MCL 600.701 *et seq*.

(B) Motion for Writ.

(1) The plaintiff may seek a writ of attachment by filing an ex parte motion supported by an affidavit setting forth specific facts showing that

(a) at the time of the execution of the affidavit the defendant is indebted to the plaintiff in a stated amount on a contract in excess of all setoffs,

(b) the defendant is subject to the judicial jurisdiction of the state, and

(c) after diligent effort the plaintiff cannot serve the defendant with process.

In an action brought on a tort claim or a foreign judgment, subrules (B)(2) and (3), respectively, apply.

(2) In a tort action the following provisions apply:

(a) Instead of the allegations required by subrule (B)(1)(a), the affidavit in support of the motion must describe the injury claimed and state that the affiant in good faith believes that the defendant is liable to the plaintiff in a stated amount. The other requirements of subrule (B)(1) apply.

(b) If the writ is issued the court shall specify the amount or value of property to be attached.

(3) In an action brought on a foreign judgment, instead of the allegations required by subrule (B)(1), the affidavit in support of the motion must show that

(a) the defendant is indebted to the plaintiff on a foreign judgment in a stated amount in excess of all setoffs,

(b) the defendant is not subject to the jurisdiction of the state or that after diligent effort the plaintiff cannot serve the defendant with process.

(C) Issuance of Writ.

(1) On a finding that the writ is available under this rule and that the affidavit states a sufficient basis for issuance of the writ, the judge to whom the action is assigned may issue the writ.

(2) The judge's order shall specify what further steps, if any, must be taken by the plaintiff to notify the defendant of the action and the attachment.

(D) Contents of Writ. The writ of attachment must command the sheriff or other officer to whom it is directed

(1) to attach so much of the defendant's real and personal property not exempt from execution as is necessary to satisfy the plaintiff's demand and costs, and

(2) to keep the property in a secure place to satisfy any judgment that may be recovered by the plaintiff in the action until further order of the court.

(E) Execution of Writ; Subsequent Attachments.

(1) The sheriff or other officer to whom a writ of attachment is directed shall execute the writ by seizing and holding so much of the defendant's property not exempt from execution, wherever found within the county, as is necessary to satisfy the plaintiff's demand and costs. If insufficient property is seized, then the officer shall seize other property of the defendant not exempt from execution, wherever found within Michigan, as is necessary when added to that already seized, to satisfy the plaintiff's demand and costs. The property seized must be inventoried by the officer and appraised by two disinterested residents of the county in which the property was seized. After being sworn under oath to make a true appraisal, the appraisers shall make and sign an appraisal. The inventory and appraisal must be filed and a copy served on the parties under MCR 2.107.

(2) In subsequent attachments of the same property while in the hands of the officer, the original inventory and appraisal satisfy the requirement of subrule (E)(1).

(F) Attachment of Realty; Stock.

(1) The officer may seize an interest in real estate by depositing a certified copy of the writ of attachment, including a description of the land affected, with the register of deeds for the county in which the land is located. It is not necessary that the officer enter on the land or be within view of it.

(2) Shares of stock or the interest of a stockholder in a domestic corporation must be seized in the manner provided for the seizure of that property on execution.

(G) Animals or Perishable Property; Sale; Distribution of Proceeds.

(1) When any of the property attached consists of animals or perishable property, the court may order the property sold and the money from the sale brought into court, to await the order of the court.

(2) After the order for a sale is entered, the officer having the property shall advertise and sell it in the manner that personal property of like character is required to be advertised and sold on execution. The officer shall deposit the proceeds with the clerk of the court in which the action is pending.

(3) If the plaintiff recovers judgment, the court may order the money paid to the plaintiff. If the judgment is entered against the plaintiff or the suit is dismissed or the attachment is dissolved, the court shall order the money paid to the defendant or other person entitled to it.

(H) Dissolution of Attachment.

(1) Except in an action brought on a foreign judgment, if the defendant submits to the jurisdiction of the court, the court shall dissolve the attachment.

(2) A person who owns, possesses, or has an interest in attached property may move at any time to dissolve the attachment. The defendant may move to dissolve the attachment without submitting to the jurisdiction of the court.

(a) When a motion for dissolution of attachment is filed, the court shall enter an order setting a time and place for hearing the motion, and may issue subpoenas to compel witnesses to attend.

(b) The plaintiff must be served with notice under MCR 2.107 at least 3 days before the hearing unless the court's order prescribes a different notice requirement.

(c) At the hearing, the proofs are heard in the same manner as in a nonjury trial. If the court decides that the defendant was not subject to the jurisdiction of the state or that the property was not subject to or was exempt from attachment, it shall dissolve the attachment and restore the property to the defendant, and the attachment may be dissolved for any other sufficient reason. The court may order the losing party to pay the costs of the dissolution proceeding.

(3) If the action is dismissed or judgment is entered for the defendant, the attachment is dissolved.

(I) Satisfaction of Judgment.

(1) If the attachment remains in effect until the entry of judgment against the defendant, the attached property may be applied to the satisfaction of the judgment, including interest and costs, in the same manner as in the case of an execution.

(2) If the court does not acquire personal jurisdiction over the defendant, either by service or by the defendant's appearance, a judgment against the defendant is not binding beyond the value of the attached property.

Rule 3.104 Installment Payment Orders

(A) Motion for Installment Payment Order. A party against whom a money judgment has been entered may move for entry of an order permitting the judgment to be paid in installments in accordance with MCL 600.6201 et seq. A

copy of the motion must be served on the plaintiff, by the clerk of the court in district court and by the party who filed the objection in circuit or probate court.

(B) Consideration of Motion. The motion will be granted without further hearing unless the plaintiff files, and serves on the defendant, written objections within 14 days after the service date of the defendant's motion. If objections are filed, the clerk must promptly present the motion and objections to the court. The court will decide the motion based on the papers filed or notify the parties that a hearing will be required. Unless the court schedules the hearing, the moving party is responsible for noticing the motion for hearing.

(C) Failure to Comply with Installment Order. If the defendant fails to make payments pursuant to the order for installment payments, the plaintiff may file and serve on the defendant a motion to set aside the order for installment payments. Unless a hearing is requested within 14 days after service of the motion, the order to set aside the order for installment payments will be entered.

(D) Request After Failure to Comply with Previous Order. If the defendant moves for an order for installment payments within 91 days after a previous installment order has been set aside, unless good cause is shown the court shall assess costs against the defendant as a condition of entry of the new order.

Rule 3.105 Claim and Delivery

(A) Nature of Action; Replevin. Claim and delivery is a civil action to recover

(1) possession of goods or chattels which have been unlawfully taken or unlawfully detained, and

(2) damages sustained by the unlawful taking or unlawful detention.

A statutory reference to the action of replevin is to be construed as a reference to the action of claim and delivery.

(B) Rules Applicable. A claim and delivery action is governed by the rules applicable to other civil actions, except as provided in MCL 600.2920, and this rule.

(C) Complaint; Joinder of Claims; Interim Payments. A claim and delivery complaint must:

(1) specifically describe the property claimed;

(2) state the value of the property claimed (which will be used only to set the amount of bond and not as an admission of value);

(3) state if the property claimed is an independent piece of property or a portion of divisible property of uniform kind, quality, and value; and

(4) specifically describe the nature of the claim and the basis for the judgment requested.

If the action is based on a security agreement, a claim for the debt may be joined as a separate count in the complaint. If the plaintiff, while the action is pending, receives interim payments equal to the amount originally claimed, the action must be dismissed.

(D) Answer. An answer to a claim and delivery complaint may concede the claim for possession and yet contest any other claim.

(E) Possession Pending Final Judgment.

(1) Motion for Possession Pending Final Judgment. After the complaint is filed, the plaintiff may file a verified motion requesting possession pending final judgment. The motion must

(a) describe the property to be seized, and

(b) state sufficient facts to show that the property described will be damaged, destroyed, concealed, disposed of, or used so as to substantially impair its value, before final judgment unless the property is taken into custody by court order.

(2) Court Order Pending Hearing. After a motion for possession pending final judgment is filed, the court, if good cause is shown, must order the defendant to

(a) refrain from damaging, destroying, concealing, disposing of, or using so as to substantially impair its value, the property until further order of the court; and

(b) appear before the court at a specified time to answer the motion.

(3) Hearing on Motion for Possession Pending Final Judgment.

(a) At least 7 days before a hearing on a motion filed under this subrule, the defendant must be served with

(i) a copy of the motion; and

(ii) an order entered under subrule (E)(2).

(b) At the hearing, each party may present proofs. To obtain possession before judgment, the plaintiff must establish

(i) that the plaintiff's right to possession is probably valid; and

(ii) that the property will be damaged, destroyed, concealed, disposed of, or used so as to substantially impair its value, before trial.

(c) Adjournment. A court may not

(i) grant an adjournment of this hearing on the basis that a defendant has not yet answered the complaint or the motion filed under this subrule; or

(ii) allow a hearing on this motion if the hearing date has been adjourned more than 56 days with the assent of the plaintiff, unless the plaintiff files a new motion which includes recitations of any payments made by the defendant after the original motion was filed.

(4) Order for Custody Pending Final Judgment. After proofs have been taken on the plaintiff's motion for possession pending final judgment, the court may order whatever relief the evidence requires. This includes:

(a) denying the motion;

(b) leaving the defendant in possession of the property and restraining the defendant from damaging, destroying, concealing, or disposing of the property.

The court may condition the defendant's continued possession by requiring the defendant to

(i) furnish a penalty bond, payable to the plaintiff, of not less than $100 and at least twice the value of the property stated in the complaint; and

(ii) agree that he or she will surrender the property to the person adjudged entitled to possession and will pay any money that may be recovered against him or her in the action;

(c) ordering the sheriff or court officer to seize the property within 21 days and either hold it or deliver it to the plaintiff. The court may condition the plaintiff's possession by requiring the plaintiff to

(i) furnish a penalty bond payable to the defendant, and to the sheriff or court officer, of not less than $100 and at least twice the value of the property stated in the complaint; and

(ii) agree that he or she will surrender the property to the person adjudged entitled to possession, diligently prosecute the suit to final judgment, and pay any money that may be recovered against him or her in the action.

A bond required in a claim and delivery action must be approved by and filed with the court within the time the order provides.

(F) Seizure. A copy of an order issued under subrule (E)(4)(c) must be delivered to the sheriff or court officer, who must

(1) seize the property described in the order;

(2) serve a copy of the order on the defendant, under MCR 2.107; and

(3) file a return with the court showing seizure and service.

(G) Custody; Delivery. After seizing the property, the sheriff or court officer shall keep it in a secure place and deliver it in accordance with the court order. The sheriff or court officer is entitled to receive the lawful fees for seizing the property and the necessary expenses for seizing and keeping it.

(H) Judgment.

(1) The judgment must determine

(a) the party entitled to possession of the property,

(b) the value of the property,

(c) the amount of any unpaid debt, and

(d) any damages to be awarded.

(2) If the property is not in the possession of the party who is entitled to possession, a judgment must order the property to be immediately delivered to that party.

(3) If the action is tried on the merits, the value of the property and the damages are determined by the trier of fact.

(4) If the defendant has been deprived of the property by a prejudgment order and the main action is dismissed, the defendant may apply to the court for default judgment under MCR 2.603.

(5) If the plaintiff takes a default judgment, the value of the property and the damages are determined under MCR 2.603. A defendant who appeared at a show-cause proceeding is deemed to have filed an appearance.

(6) The party adjudged entitled to possession of the property described may elect to take judgment for the value of the property instead of possession. The judgment value may not exceed the unpaid debt, if any, secured by such property.

(7) The liability of a surety on a bond given under this rule may be determined on motion under MCR 3.604.

(I) Costs. Costs may be taxed in the discretion of the court. Costs may include the cost of a bond required by the court, and the costs of seizing and keeping the property.

(J) Execution.

(1) The execution issued on a judgment in a claim and delivery action must command the sheriff or court officer

(a) to levy the prevailing party's damages and costs on the property of the opposite party, as in other executions against property; and

(b) if the property described in the judgment is found in the possession of the defendant, to seize the property described in the judgment and deliver it to the prevailing party; or, if the property is not found in the possession of the defendant, to levy the value of it. The value may not exceed the total of the unpaid debt, costs, and damages.

(2) Execution may not issue on a judgment in a claim and delivery action if more than 28 days have passed from the signing of the judgment, unless

(a) the plaintiff files a motion for execution which must include, if money has been paid on the judgment, the amount paid and the conditions under which it was accepted; and

(b) a hearing is held after the defendant has been given notice and an opportunity to appear.

Rule 3.106 Procedures Regarding Orders for the Seizure of Property and Orders of Eviction

(A) Scope of Rule. This rule applies to orders for the seizure of property and orders of eviction.

(B) Persons Who May Seize Property or Conduct Evictions. The persons who may seize property or conduct evictions are those persons named in MCR 2.103(B), and they are subject to the provisions of this rule unless a provision or a statute specifies otherwise.

(1) A court may provide that property shall be seized and evictions conducted only by

(a) court officers and bailiffs serving that court;

(b) sheriffs and deputy sheriffs;

(c) officers of the Department of State Police in an action in which the state is a party; and

(d) police officers of an incorporated city or village in an action in which the city or village is a party.

(2) Each court must post, in a public place at the court, a list of those persons who are serving as court officers or bailiffs. The court must provide the State Court Administrative Office with a copy of the list, and must notify the State Court Administrative Office of any changes.

(C) Appointment of Court Officers. Court officers may be appointed by a court for a term not to exceed 2 years.

(1) The appointment shall be made by the chief judge. Two or more chief judges may jointly appoint court officers for their respective courts.

(2) The appointing court must specify the nature of the court officer's employment relationship at the time of appointment.

(3) The appointing court must maintain a copy of each court officer's application, as required by the State Court Administrative Office.

(4) The State Court Administrative Office shall develop a procedure for the appointment and supervision of court officers, including a model application form. Considerations shall include, but are not limited to, an applicant's character, experience, and references.

(D) Conditions of Service as a Court Officer or Bailiff. Court officers and bailiffs must

(1) post a surety bond pursuant to MCR 8.204;

(2) provide the names and addresses of all financial institutions in which they deposit funds obtained under this rule, and the respective account numbers; and

(3) provide the names and addresses of those persons who regularly provide services to them in the seizure of property or evictions.

(E) Forms. The State Court Administrative Office shall publish forms approved for use with regard to the procedures described in this rule.

(F) Procedures Generally.

(1) All persons specified in MCR 2.103(B) must carry and display identification authorized by the court or the agency that they serve.

(2) A copy of the order for seizure of property or eviction shall be served on the defendant or the defendant's agent, or left or posted on the premises in a conspicuous place. If property is seized from any other location, a copy of the order shall be mailed to the defendant's last known address.

(G) Procedures Regarding Orders for Seizure of Property.

(1) Orders for seizure of property shall be issued pursuant to statute and endorsed upon receipt.

(2) No funds may be collected pursuant to an order for seizure of property prior to service under subrule (F)(2).

(3) An inventory and receipt shall be prepared upon seizure of property or payment of funds.

(a) The original shall be filed with the court within 7 days of the seizure or payment.

(b) A copy shall be

(i) provided to the parties or their respective attorneys or agents and posted on the premises in a conspicuous place; if the property is seized from any other location, a copy shall be mailed to the nonprevailing party's last known address, and

(ii) retained by the person who seized the property.

(4) Property seized shall be disposed of according to law.

(5) Within 21 days, and as directed by the court, any money that is received shall be paid to the court or deposited in a trust account for payment to the prevailing party or that party's attorney.

(6) Costs allowed by statute shall be paid according to law.

(a) Copies of all bills and receipts for service shall be retained for one year by the person serving the order.

(b) Statutory collection fees shall be paid in proportion to the amount received.

(c) There shall be no payment except as provided by law.

(7) Within 14 days after the expiration of the order or satisfaction of judgment, whichever is first, the following shall be filed with the court and a copy provided to the prevailing party or that party's attorney:

(a) a report summarizing collection activities, including an accounting of all money or property collected,

(b) a report that collection activities will continue pursuant to statute, if applicable, or

(c) a report that no collection activity occurred.

(H) Procedures Regarding Orders of Eviction. Copies of all bills and receipts for services shall be retained by the person serving the order for one year.

Rule 3.110 Stockholders' Liability Proceedings

(A) Scope of Rule. This rule applies to actions brought under MCL 600.2909.

(B) When Action May Be Brought. An action against stockholders in which it is claimed that they are individually liable for debts of a corporation may not be brought until:

(1) a judgment has been recovered against the corporation for the indebtedness;

(2) an execution on the judgment has been issued to the county in which the corporation has its principal office or carries on its business; and

(3) the execution has been returned unsatisfied in whole or in part.

(C) Order for List of Stockholders. When the conditions set out in subrule (B) are met, the plaintiff may apply to the court that entered the judgment to order a list of stockholders. The court shall enter an order to be served on the secretary or other proper officer of the corporation, requiring the officer, within the time provided in the order, to file a statement under oath listing the names and addresses of all persons who appear by the corporation books to have been, or who the officer has reason to believe were, stockholders when the debt accrued, and the amount of stock held by each of them.

(D) Commencement of Action; Complaint. An action against the stockholders to impose personal liability on them for the debt of the corporation may be commenced and carried on as other civil actions under these rules. The complaint must, among other things, state:

(1) that the plaintiff has obtained a judgment against the corporation and the amount;

(2) that execution has been issued and returned unsatisfied in whole or in part, and the amount remaining unpaid;

(3) that the persons named as defendants are the persons listed in the statement filed by the officer of the corporation under subrule (C);

(4) the amount of stock held by each defendant, or that the plaintiff could not, with reasonable diligence, ascertain the amounts;

(5) the consideration received by the corporation for the debt on which judgment was rendered;

(6) a request for judgment against the stockholders in favor of the plaintiff for the amount alleged to be due from the corporation.

(E) Judgment Against Corporation As Evidence. At the trial the judgment against the corporation and the amount remaining unpaid are prima facie evidence of the amount due to the plaintiff but are not evidence that the debt on which the judgment was rendered is one for which the defendants are personally liable.

(F) Entry of Judgment Against Defendant. If a defendant admits the facts set forth in the complaint or defaults by failing to answer, or if the issues are determined against the defendant, judgment may be entered against him or her for the amount of the judgment against the corporation remaining unpaid, on proof that the debt is one for which that defendant is personally liable as a stockholder.

(G) Order of Apportionment; Execution. After judgment has been entered against all or some of the defendants, the court may apportion among these defendants the sum for which they have been adjudged liable pro rata according to the stock held by each. If any defendant fails to pay the amount apportioned against that defendant within 21 days, execution may issue as in other civil actions.

(H) Reapportionment. If execution is returned unsatisfied in whole or in part against any of the defendants as to whom apportionment has been made, the court has the power and the duty on application by the plaintiff to reapportion the sum remaining uncollected on the basis of subrule (G) among the remaining defendants adjudged liable. Execution may issue for the collection of these amounts.

(I) Contribution Among Stockholders. A stockholder who has been compelled to pay more than his or her pro rata share of the debts of the corporation, according to the amount of stock held, is entitled to contribution from other stockholders who are also liable for the debt and who have not paid their portions.

Subchapter 3.200 Domestic Relations Actions

Rule 3.201 Applicability of Rules

(A) Subchapter 3.200 applies to

(1) actions for divorce, separate maintenance, the annulment of marriage, the affirmation of marriage, paternity, family support under MCL 552.451 *et seq*., the custody of minors under MCL 722.21 et seq., and visitation with minors under MCL 722.27b, and to

(2) proceedings that are ancillary or subsequent to the actions listed in subrule (A)(1) and that relate to

(a) the custody of minors,

(b) visitation with minors, or

(c) the support of minors and spouses or former spouses.

(B) As used in this subchapter with regard to child support, the terms "minor" or "child" may include children who have reached the age of majority, in the circumstances where the legislature has so provided.

(C) Except as otherwise provided in this subchapter, practice and procedure in domestic relations actions is governed by other applicable provisions of the Michigan Court Rules.

(D) When used in this subchapter, unless the context otherwise indicates:

(1) "Case" means an action initiated in the family division of the circuit court by:

(a) submission of an original complaint, petition, or citation;

(b) acceptance of transfer of an action from another court or tribunal; or

(c) filing or registration of a foreign judgment or order.

(2) "File" means the repository for collection of the pleadings and other documents and materials related to a case. A file may include more than one case involving a family.

(3) "Jurisdiction" means the authority of the court to hear cases and make decisions and enter orders on cases.

Rule 3.202 Capacity to Sue

(A) Minors and Incompetent Persons. Except as provided in subrule (B), minors and incompetent persons may sue and be sued as provided in MCR 2.201.

(B) Emancipated Minors. An emancipated minor may sue and be sued in the minor's own name, as provided in MCL 722.4e(1)(b).

Rule 3.203 Service of Notice and Court Papers in Domestic Relations Cases

(A) Manner of Service. Unless otherwise required by court rule or statute, the summons and complaint must be served pursuant to MCR 2.105. In cases in which the court retains jurisdiction

(1) notice must be provided as set forth in the statute requiring the notice. Unless otherwise required by court rule or statute, service by mail shall be to a party's last known mailing address, and

(2) court papers and notice for which the statute or court rule does not specify the manner of service must be served as provided in MCR 2.107, except that service by mail shall be to a party's last known mailing address.

(B) Place of Service; After Entry of Judgment or Order. When a domestic relations judgment or order requires the parties to inform the friend of the court office of any changes in their mailing address, a party's last known mailing address means the most recent address

(1) that the party provided in writing to the friend of the court office, or

(2) set forth in the most recent judgment or order entered in the case, or

(3) the address established by the friend of the court office pursuant to subrule (D).

(C) Place of Service; Before Entry of Judgment or Order. After a summons and complaint has been filed and served on a party, but before entry of a judgment or order that requires the parties to inform the friend of the court of any changes in their mailing address, the last known mailing address is the most recent address

(1) set forth in the pleadings, or

(2) that a party provides in writing to the friend of the court office.

(D) Administrative Change of Address. The friend of the court office shall change a party's address administratively pursuant to the policy established by the state court administrator for that purpose when:

(1) a party's address changes in another friend of the court office pursuant to these rules, or

(2) notices and court papers are returned to the friend of the court office as undeliverable.

(E) Service on Nonparties. Notice to a nonparty must be provided as set forth in the statute requiring the notice. Absent statutory direction, the notice may be provided by regular mail. Absent statutory direction, court papers initiating an action against nonparties to enforce a notice must be served in the same manner as a summons and complaint pursuant to MCR 2.105.

(F) Confidential Addresses. When a court order makes a party's address confidential, the party shall provide an alternative address for service of notice and court papers.

(G) Notice to Friend of the Court. If a child of the parties or a child born during the marriage is under the age of 18, or if a party is pregnant, or if child support or

spousal support is requested, the parties must provide the friend of the court with a copy of all pleadings and other papers filed in the action. The copy must be marked "friend of the court" and submitted to the court clerk at the time of filing. The court clerk must send the copy to the friend of the court.

(H) Notice to Prosecuting Attorney. In an action for divorce or separate maintenance in which a child of the parties or a child born during the marriage is under the age of 18, or if a party is pregnant, the plaintiff must serve a copy of the summons and complaint on the prosecuting attorney when required by law. Service must be made at the time of filling by providing the court clerk with an additional copy marked "prosecuting attorney". The court clerk must send the copy to the prosecuting attorney.

(I) Service of Informational Pamphlet. If a child of the parties or a child born during the marriage is under the age of 18, or if a party is pregnant, or if child support or spousal support is requested, the plaintiff must serve with the complaint a copy of the friend of the court informational pamphlet required by MCL 552.505(a). The proof of service must state that service of the informational pamphlet has been made.

Rule 3.204 Proceedings Affecting Children

(A) Unless the court orders otherwise for good cause, if a circuit court action involving child support, custody, or parenting time is pending, or if the circuit court has continuing jurisdiction over such matters because of a prior action:

(1) A new action concerning support, custody or parenting time of the same child must be filed as a motion or supplemental complaint in the earlier action. The new action shall be filed as a motion if the relief sought would have been available in the original cause of action. If the relief sought was not available in the original action, the new action must be filed as a supplemental complaint.

(2) A new action for the support, custody, or parenting time of a different child of the same parents must be filed as a supplemental complaint in the earlier action if the court has jurisdiction and the new action is not an action for divorce, annulment, or separate maintenance.

(3) A new action for divorce, annulment, or separate maintenance that also involves the support, custody, or parenting time of that child must be filed in the same county if the circuit court for that county has jurisdiction over the new action and the new case must be assigned to the same judge to whom the previous action was assigned.

(4) A party may file a supplemental pleading required by this subrule without first seeking and obtaining permission from the court. The supplemental pleading must be served as provided in MCR 3.203(A)(2), and an answer must be filed within the time allowed by MCR 2.108. When this rule requires a supplemental pleading, all filing and judgment entry fees must be paid as if the action was filed separately.

(B) When more than one circuit court action involving support, custody, or parenting time of a child is pending, or more than one circuit court has continuing jurisdiction over those matters because of prior actions, an original or supplemental complaint for the support, custody, or parenting time of a different child of the same parents must be filed in whichever circuit court has jurisdiction to decide the new action. If more than one of the previously involved circuit courts would have jurisdiction to decide the new action, or if the action might be filed in more than one county within a circuit:

(1) The new action must be filed in the same county as a prior action involving the parents' separate maintenance, divorce, or annulment.

(2) If no prior action involves separate maintenance, divorce, or annulment, the new action must be filed:

(a) in the county of the circuit court that has issued a judgment affecting the majority of the parents' children in common, or

(b) if no circuit court for a county has issued a judgment affecting a majority of the parents' children in common, then in the county of the circuit court that has issued the most recent judgment affecting a child of the same parents.

(C) The court may consolidate actions administratively without holding a consolidation hearing when:

(1) the cases involve different children of the same parents but all other parties are the same, or

(2) more than one action involves the same child and parents.

(D) If a new action for support is filed in a circuit court in which a party has an existing or pending support obligation, the new case must be assigned to the same judge to whom the other case is assigned, pursuant to MCR 8.111(D).

(E) In a case involving a dispute regarding the custody of a minor child, the court may, on motion of a party or on its own initiative, for good cause shown, appoint a guardian ad litem to represent the child and assess the costs and reasonable fees against the parties involved in full or in part.

Rule 3.205 Prior and Subsequent Orders and Judgments Affecting Minors

(A) Jurisdiction. If an order or judgment has provided for continuing jurisdiction of a minor and proceedings are commenced in another Michigan court having separate jurisdictional grounds for an action affecting that minor, a waiver or transfer of jurisdiction is not required for the full and valid exercise of jurisdiction by the subsequent court.

(B) Notice to Prior Court, Friend of the Court, Juvenile Officer, and Prosecuting Attorney.

(1) As used in this rule, "appropriate official" means the friend of the court, juvenile officer, or prosecuting attorney, depending on the nature of the prior or subsequent court action and the court involved.

(2) If a minor is known to be subject to the prior continuing jurisdiction of a Michigan court, the plaintiff or other initiating party must mail written notice of proceedings in the subsequent court to the attention of

(a) the clerk or register of the prior court, and

(b) the appropriate official of the prior court.

(3) The notice must be mailed at least 21 days before the date set for hearing. If the fact of continuing jurisdiction is not then known, notice must be given immediately when it becomes known.

(4) The notice requirement of this subrule is not jurisdictional and does not preclude the subsequent court from entering interim orders before the expiration of the 21-day period, if required by the best interests of the minor.

(C) Prior Orders.

(1) Each provision of a prior order remains in effect until the provision is superseded, changed, or terminated by a subsequent order.

(2) A subsequent court must give due consideration to prior continuing orders of other courts, and may not enter orders contrary to or inconsistent with such orders, except as provided by law.

(D) Duties of Officials of Prior and Subsequent Courts.

(1) Upon receipt of the notice required by subrule (B), the appropriate official of the prior court

(a) must provide the subsequent court with copies of all relevant orders then in effect and copies of relevant records and reports, and

(b) may appear in person at proceedings in the subsequent court, as the welfare of the minor and the interests of justice require.

(2) Upon request of the prior court, the appropriate official of the subsequent court

(a) must notify the appropriate official of the prior court of all proceedings in the subsequent court, and

(b) must send copies of all orders entered in the subsequent court to the attention of the clerk or register and the appropriate official of the prior court.

(3) If a circuit court awards custody of a minor pursuant to MCL 722.26b, the clerk of the circuit court must send a copy of the judgment or order of disposition to the probate court that has prior or continuing jurisdiction of the minor as a result of the guardianship proceedings, regardless whether there is a request.

(4) Upon receipt of an order from the subsequent court, the appropriate official of the prior court must take the steps necessary to implement the order in the prior court.

Rule 3.206 Pleading

(A) Information in Complaint.

(1) Except for matters considered confidential by statute or court rule, in all domestic relations actions, the complaint must state

(a) the allegations required by applicable statutes;

(b) the residence information required by statute;

(c) the complete names of all parties; and

(d) the complete names and dates of birth of any minors involved in the action, including all minor children of the parties and all minor children born during the marriage.

(2) In a case that involves a minor, or if child support is requested, the complaint also must state whether any Michigan court has prior continuing jurisdiction of the minor. If so, the complaint must specify the court and the file number.

(3) In a case in which the custody of a minor is to be determined, the complaint or an affidavit attached to the complaint also must state the information required by MCL 722.1209.

(4) The caption of the complaint must also contain either (a) or (b) as a statement of the attorney for the plaintiff or petitioner, or of a plaintiff or petitioner appearing without an attorney:

(a) There is no other pending or resolved action within the jurisdiction of the family division of the circuit court involving the family or family members of the person[s] who [is/are] the subject of the complaint or petition.

(b) An action within the jurisdiction of the family division of the circuit court involving the family or family members of the person[s] who [is/are] the subject of the complaint or petition has been previously filed in [this court]/[_____Court], where it was given docket number _____ and was assigned to Judge _____. The action [remains]/[is no longer] pending.

(5) In an action for divorce, separate maintenance, annulment of marriage, or affirmation of marriage, regardless of the contentions of the parties with respect to the existence or validity of the marriage, the complaint also must state

(a) the names of the parties before the marriage;

(b) whether there are minor children of the parties or minor children born during the marriage;

(c) whether a party is pregnant;

(d) the factual grounds for the action, except that in an action for divorce or separate maintenance the grounds must be stated in the statutory language, without further particulars; and

(e) whether there is property to be divided.

(6) A party who requests spousal support in an action for divorce, separate maintenance, annulment, affirmation of marriage, or spousal support, must allege facts sufficient to show a need for such support and that the other party is able to pay.

(7) A party who requests an order for personal protection or for the protection of property, including but not limited to restraining orders and injunctions against domestic violence, must allege facts sufficient to support the relief requested.

(B) Verified Statement.

(1) In an action involving a minor, or if child support or spousal support is requested, the party seeking relief must attach a verified statement to the copies of the papers served on the other party and provided to the friend of the court, stating

(a) the last known telephone number, post office address, residence address, and business address of each party;

(b) the social security number and occupation of each party;

(c) the name and address of each party's employer;

(d) the estimated weekly gross income of each party;

(e) the driver's license number and physical description of each party, including eye color, hair color, height, weight, race, gender, and identifying marks;

(f) any other names by which the parties are or have been known;

(g) the name, age, birth date, social security number, and residence address of each minor involved in the action, as well as of any other minor child of either party;

(h) the name and address of any person, other than the parties, who may have custody of a minor during the pendency of the action;

(i) the kind of public assistance, if any, that has been applied for or is being received by either party or on behalf of a minor, and the AFDC and recipient identification numbers; if public assistance has not been requested or received, that fact must be stated; and

(j) the health care coverage, if any, that is available for each minor child; the name of the policyholder; the name of the insurance company, health care organization, or health maintenance organization; and the policy, certificate, or contract number.

(2) The information in the verified statement is confidential, and is not to be released other than to the court, the parties, or the attorneys for the parties,

except on court order. For good cause, the addresses of a party and minors may be omitted from the copy of the statement that is served on the other party.

(3) If any of the information required to be in the verified statement is omitted, the party seeking relief must explain the omission in a sworn affidavit, to be filed with the court.

(C) Attorney Fees and Expenses.

(1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.

(2) A party who requests attorney fees and expenses must allege facts sufficient to show that

(a) the party is unable to bear the expense of the action, and that the other party is able to pay, or

(b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply.

Rule 3.207 Ex Parte, Temporary, and Protective Orders

(A) Scope of Relief. The court may issue ex parte and temporary orders with regard to any matter within its jurisdiction, and may issue protective orders against domestic violence as provided in subchapter 3.700.

(B) Ex Parte Orders.

(1) Pending the entry of a temporary order, the court may enter an ex parte order if the court is satisfied by specific facts set forth in an affidavit or verified pleading that irreparable injury, loss, or damage will result from the delay required to effect notice, or that notice itself will precipitate adverse action before an order can be issued.

(2) The moving party must arrange for the service of true copies of the ex parte order on the friend of the court and the other party.

(3) An ex parte order is effective upon entry and enforceable upon service.

(4) An ex parte order remains in effect until modified or superseded by a temporary or final order.

(5) An ex parte order providing for child support, custody, or visitation pursuant to MCL 722.27a, must include the following notice:

"Notice:

"1. You may file a written objection to this order or a motion to modify or rescind this order. You must file the written objection or motion with the clerk of the court within 14 days after you were served with this order. You must serve a true copy of the objection or motion on the friend of the court and the party who obtained the order.

"2. If you file a written objection, the friend of the court must try to resolve the dispute. If the friend of the court cannot resolve the dispute and if you wish to bring the matter before the court without the assistance of counsel, the friend of the court must provide you with form pleadings and written instructions and must schedule a hearing with the court.

"3. The ex parte order will automatically become a temporary order if you do not file a written objection or motion to modify or rescind the ex parte order and a request for a hearing. Even if an objection is filed, the ex parte order will remain in effect and must be obeyed unless changed by a later court order."

(6) In all other cases, the ex parte order must state that it will automatically become a temporary order if the other party does not file a written objection or motion to modify or rescind the ex parte order and a request for a hearing. The written objection or motion and the request for a hearing must be filed with the clerk of the court, and a true copy provided to the friend of the court and the other party, within 14 days after the order is served.

(a) If there is a timely objection or motion and a request for a hearing, the hearing must be held within 21 days after the objection or motion and request are filed.

(b) A change that occurs after the hearing may be made retroactive to the date the ex parte order was entered.

(7) The provisions of MCR 3.310 apply to temporary restraining orders in domestic relations cases.

(C) Temporary Orders.

(1) A request for a temporary order may be made at any time during the pendency of the case by filing a verified motion that sets forth facts sufficient to support the relief requested.

(2) A temporary order may not be issued without a hearing, unless the parties agree otherwise or fail to file a written objection or motion as provided in subrules (B)(5) and (6).

(3) A temporary order may be modified at any time during the pendency of the case, following a hearing and upon a showing of good cause.

(4) A temporary order must state its effective date and whether its provisions may be modified retroactively by a subsequent order.

(5) A temporary order remains in effect until modified or until the entry of the final judgment or order.

(6) A temporary order not yet satisfied is vacated by the entry of the final judgment or order, unless specifically continued or preserved. This does not apply to support arrearages that have been assigned to the state, which are preserved unless specifically waived or reduced by the final judgment or order.

Rule 3.208 Friend of the Court

(A) General. The friend of the court has the powers and duties prescribed by statute, including those duties in the Friend of the Court Act, MCL 552.501 et seq., and the Support and Visitation Enforcement Act, MCL 552.601 *et seq*.

(B) Enforcement. The friend of the court is responsible for initiating proceedings to enforce an order or judgment for support, visitation, or custody.

(1) If a party has failed to comply with an order or judgment, the friend of the court may petition for an order to show cause why the party should not be held in contempt.

(2) The order to show cause must be served personally or by ordinary mail at the party's last known address.

(3) The hearing on the order to show cause may be held no sooner than seven days after the order is served on the party. If service is by ordinary mail, the hearing may be held no sooner than nine days after the order is mailed.

(4) If the party fails to appear in response to the order to show cause, the court may issue an order for arrest.

(5) The relief available under this rule is in addition to any other relief available by statute.

(6) The friend of the court may petition for an order of arrest at any time, if immediate action is necessary.

(C) Allocation and Distribution of Payments.

(1) Except as otherwise provided in this subrule, all payments shall be allocated and distributed as required by the guidelines established by the state court administrator for that purpose.

(2) If the court determines that following the guidelines established by the state court administrator would produce an unjust result in a particular case, the court may order that payments be made in a different manner. The order must include specific findings of fact that set forth the basis for the court's decision, and must direct the payer to designate with each payment the name of the payer and the payee, the case number, the amount, and the date of the order that allows the special payment.

(3) If a payer with multiple cases makes a payment directly to the friend of the court rather than through income withholding, the payment shall be allocated among all the cases unless the payer requests a different allocation in writing at the time of payment and provides the following information about each case for which payment is intended:

(a) the name of the payer,

(b) the name of the payee,

(c) the case number, and

(d) the amount designated for that case.

(4) A notice of income withholding may not be used by the friend of the court or the state disbursement unit to determine the specific allocation or distribution of payments.

(D) Notice to Attorneys.

(1) Copies of notices required to be given to the parties also must be sent to the attorneys of record.

(2) The notice requirement of this subrule remains in effect until 21 days after judgment is entered or until postjudgment matters are concluded, whichever is later.

Rule 3.209 Suspension of Enforcement and Dismissal

(A) Suspension of Enforcement.

(1) Because of a reconciliation or for any other reason, a party may file a motion to suspend the automatic enforcement of a support obligation by the friend of the court. Such a motion may be filed before or after the entry of a judgment.

(2) A support obligation cannot be suspended except by court order.

(B) Dismissal. Unless the order of dismissal specifies otherwise, dismissal of an action under MCR 2.502 or MCR 2.504 cancels past-due child support, except for that owed to the State of Michigan.

Rule 3.210 Hearings and Trials

(A) In General.

(1) Proofs or testimony may not be taken in an action for divorce or separate maintenance until the expiration of the time prescribed by the applicable statute, except as otherwise provided by this rule.

(2) In cases of unusual hardship or compelling necessity, the court may, upon motion and proper showing, take testimony and render judgment at any time 60 days after the filing of the complaint.

(3) Testimony may be taken conditionally at any time for the purpose of perpetuating it.

(4) Testimony must be taken in person, except that the court may allow testimony to be taken by telephone or other electronically reliable means, in extraordinary circumstances.

(B) Default Cases.

(1) Default cases are governed by MCR 2.603.

(2) A judgment of divorce, separate maintenance, or annulment may not be entered as a matter of course on the default of the defendant because of failure to appear at the hearing or by consent. Every case must be heard in open court on proofs taken, except as otherwise provided by statute or court rule.

(3) If a party is in default, proofs may not be taken unless the judgment fee has been deposited with the court clerk and the proposed judgment has been given to the court.

(4) If the court determines that the proposed judgment is inappropriate, the party who prepared it must, within 14 days, present a modified judgment in conformity with the court's opinion.

(5) If the court determines not to enter the judgment, the court must direct that the judgment fee be returned to the person who deposited it.

(C) Custody of a Minor.

(1) When the custody of a minor is contested, a hearing on the matter must be held within 56 days

(a) after the court orders, or

(b) after the filing of notice that a custody hearing is requested,

unless both parties agree to mediation under MCL 552.513 and mediation is unsuccessful, in which event the hearing must be held within 56 days after the final mediation session.

(2) If a custody action is assigned to a probate judge pursuant to MCL 722.26b, a hearing on the matter must be held by the probate judge within 56 days after the case is assigned.

(3) The court must enter a decision within 28 days after the hearing.

(4) The notice required by this subrule may be filed as a separate document, or may be included in another paper filed in the action if the notice is mentioned in the caption.

(5) The court may interview the child privately to determine if the child is of sufficient age to express a preference regarding custody, and, if so, the reasonable preference of the child. The court shall focus the interview on these determinations, and the information received shall be applied only to the reasonable preference factor.

(6) If a report has been submitted by the friend of the court, the court must give the parties an opportunity to review the report and to file objections before a decision is entered.

(7) The court may extend for good cause the time within which a hearing must be held and a decision rendered under this subrule.

(8) In deciding whether an evidentiary hearing is necessary with regard to a postjudgment motion to change custody, the court must determine, by requiring an offer of proof or otherwise, whether there are contested factual issues that must be resolved in order for the court to make an informed decision on the motion.

(D) The court must make findings of fact as provided in MCR 2.517, except that

(1) findings of fact and conclusions of law are required on contested postjudgment motions to modify a final judgment or order, and

(2) the court may distribute pension, retirement, and other deferred compensation rights with a qualified domestic relations order, without first making a finding with regard to the value of those rights.

Rule 3.211 Judgments and Orders

(A) Each separate subject in a judgment or order must be set forth in a separate paragraph that is prefaced by an appropriate heading.

(B) A judgment of divorce, separate maintenance, or annulment must include

(1) the insurance and dower provisions required by MCL 552.101;

(2) a determination of the rights of the parties in pension, annuity, and retirement benefits, as required by MCL 552.101(4);

(3) a determination of the property rights of the parties; and

(4) a provision reserving or denying spousal support, if spousal support is not granted; a judgment silent with regard to spousal support reserves it.

(C) A judgment or order awarding custody of a minor must provide that

(1) the domicile or residence of the minor may not be moved from Michigan without the approval of the judge who awarded custody or the judge's successor,

(2) the person awarded custody must promptly notify the friend of the court in writing when the minor is moved to another address, and

(3) a parent whose custody or parenting time of a child is governed by the order shall not change the legal residence of the child except in compliance with section 11 of the Child Custody Act, MCL 722.31.

(D) Uniform Support Orders

(1) Any provisions regarding child support or spousal support must be prepared on the latest version of the Uniform Support Order drafted by the state court administrative office and approved by the Supreme Court. This order must accompany any judgment or order affecting child support or spousal support, and both documents must be signed by the judge. If only child support or spousal support is ordered, then only the Uniform Support Order must be submitted to the court for entry. The Uniform Support Order shall govern if the terms of the judgment or order conflict with the Uniform Support Order.

(2) No judgment or order concerning a minor or a spouse shall be entered unless either:

(a) the final judgment or order incorporates by reference a Uniform Support Order, or

(b) the final judgment or order states that no Uniform Support Order is required because support is reserved or spousal support is not ordered.

(3) The clerk shall charge a single judgment entry fee when a Uniform Support Order is submitted for entry along with a judgment or order that incorporates it by reference.

(E) Unless otherwise ordered, all support arrearages owing to the state are preserved upon entry of a final order or judgment. Upon a showing of good cause and notice to the friend of the court, the prosecuting attorney, and other interested parties, the court may waive or reduce such arrearages.

(F) Entry of Judgment or Order

(1) Within 21 days after the court renders an opinion or the settlement agreement is placed on the record, the moving party must submit a judgment, order, or a motion to settle the judgment or order, unless the court has granted an extension.

(2) The party submitting the first temporary order awarding child custody, parenting time, or support and the party submitting any final proposed judgment awarding child custody, parenting time, or support must:

(a) serve the friend of the court office and, unless the court orders otherwise, all other parties, with a completed copy of the latest version of the state court administrative office's domestic relations Judgment Information Form, and

(b) file a proof of service certifying that the Judgment Information Form has been provided to the friend of the court office and, unless the court orders otherwise, to all other parties.

(3) If the court modifies the proposed judgment or order before signing it, the party submitting the judgment or order must, within 7 days, submit a new Judgment Information Form if any of the information previously submitted changes as a result of the modification.

(4) Before it signs a judgment or order awarding child support or spousal support, the court must determine that:

(a) the party submitting the judgment or order has certified that the Judgment Information Form in subrule (F)(2) has been submitted to the friend of the court, and

(b) pursuant to subrule (D)(2) any judgment or order concerning a minor or a spouse is accompanied by a Uniform Support Order or explains why a Uniform Support Order is unnecessary.

(5) The Judgment Information Form must be filed in addition to the verified statement that is required by MCR 3.206.

(G) Friend of the Court Review. For all judgments and orders containing provisions identified in subrules (C), (D), (E), and (F), the court may require that the judgment or order be submitted to the friend of the court for review.

(H) Service of Judgment or Order.

(1) When a judgment or order is obtained for temporary or permanent spousal support, child support, or separate maintenance, the prevailing party must immediately deliver one copy to the court clerk. The court clerk must write or stamp "true copy" on the order or judgment and file it with the friend of the court.

(2) The party securing entry of a judgment or order that provides for child support or spousal support must serve a copy on the party ordered to pay the support, as provided in MCR 2.602(D)(1), even if that party is in default.

(3) The record of divorce and annulment required by MCL 333.2864 must be filed at the time of the filing of the judgment.

Rule 3.212 Postjudgment Transfer of Domestic Relations Cases

(A) Motion.

(1) A party, court-ordered custodian, or friend of the court may move for the postjudgment transfer of a domestic relations action in accordance with this rule, or the court may transfer such an action on its own motion. A transfer includes a change of venue and a transfer of all friend of the court responsibilities. The court may enter a consent order transferring a postjudgment domestic relations action, provided the conditions under subrule (B) are met.

(2) The postjudgment transfer of an action initiated pursuant to MCL 780.151 *et seq*., is controlled by MCR 3.214.

(B) Conditions.

(1) A motion filed by a party or court-ordered custodian may be granted only if all of the following conditions are met:

(a) the transfer of the action is requested on the basis of the residence and convenience of the parties, or other good cause consistent with the best interests of the child;

(b) neither party nor the court-ordered custodian has resided in the county of current jurisdiction for at least 6 months prior to the filing of the motion;

(c) at least one party or the court-ordered custodian has resided in the county to which the transfer is requested for at least 6 months prior to the filing of the motion; and

(d) the county to which the transfer is requested is not contiguous to the county of current jurisdiction.

(2) When the court or the friend of the court initiates a transfer, the conditions stated in subrule (B)(1) do not apply.

(C) Unless the court orders otherwise for good cause, if a friend of the court becomes aware of a more recent final judgment involving the same parties issued in a different county, the friend of the court must initiate a transfer of the older case to the county in which the new judgment was entered if neither of the parents, any of their children who are affected by the judgment in the older case, nor another party resides in the county in which the older case was filed.

(D) Transfer Order.

(1) The court ordering a postjudgment transfer must enter all necessary orders pertaining to the certification and transfer of the action. The transferring court must send to the receiving court all court files and friend of the court files,

ledgers, records, and documents that pertain to the action. Such materials may be used in the receiving jurisdiction in the same manner as in the transferring jurisdiction.

(2) The court may order that any past-due fees and costs be paid to the transferring friend of the court office at the time of transfer.

(3) The court may order that one or both of the parties or the court-ordered custodian pay the cost of the transfer.

(E) Filing Fee. An order transferring a case under this rule must provide that the party who moved for the transfer pay the statutory filing fee applicable to the court to which the action is transferred, except where MCR 2.002 applies. If the parties stipulate to the transfer of a case, they must share equally the cost of transfer unless the court orders otherwise. In either event, the transferring court must submit the filing fee to the court to which the action is transferred, at the time of transfer. If the court or the friend of the court initiates the transfer, the statutory filing fee is waived.

(F) Physical Transfer of Files. Court and friend of the court files must be transferred by registered or certified mail, return receipt requested, or by another secure method of transfer.

(G) Upon completion of the transfer, the transferee friend of the court must review the case and determine whether the case contains orders specific to the transferring court or county. The friend of the court must take such action as is necessary, which may include obtaining ex parte orders to transfer court- or county-specific actions to the transferee court.

Rule 3.213 Postjudgment Motions and Enforcement

Postjudgment motions in domestic relations actions are governed by MCR 2.119.

Rule 3.214 Actions Under Uniform Acts

(A) Governing Rules. Actions under the Revised Uniform Reciprocal Enforcement of Support Act (RURESA), MCL 780.151 *et seq*., the Uniform Interstate Family Support Act (UIFSA), MCL 552.1101 *et seq*., and the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq*., are governed by the rules applicable to other civil actions, except as otherwise provided by those acts and this rule.

(B) RURESA Actions.

(1) Definition. As used in this subrule, "support order" is defined by MCL 780.153b(8).

(2) Transfer; Initiating and Responding RURESA Cases.

(a) If a Michigan court initiates a RURESA action and there exists in another Michigan court a prior valid support order, the initiating court must transfer to that other court any RURESA order entered in a responding state. The initiating court must inform the responding court of the transfer.

(b) If a court in another state initiates a RURESA action and there exists in Michigan a prior valid support order, the responsive proceeding should be commenced in the court that issued the prior valid support order. If the responsive proceeding is commenced erroneously in any other Michigan court and a RURESA order enters, that court, upon learning of the error, must transfer the RURESA order to the court that issued the prior valid support order. The transferring court must inform the initiating court of the transfer.

(c) A court ordering a transfer must send to the court that issued the prior valid support order all pertinent papers, including all court files and friend of the court files, ledgers, records, and documents.

(d) Court files and friend of the court files must be transferred by registered or certified mail, return receipt requested, or by other secure method.

(e) The friend of the court office that issued the prior valid support order must receive and disburse immediately all payments made by the obligor or sent by a responding state.

(C) Sending Notices in UIFSA cases. The friend of the court office shall send all notices and copies of orders required to be sent by the tribunal under MCL 552.1101 *et seq.*

(D) Registration of Child Custody Determinations Under UCCJEA. The procedure for registration and enforcement of a child custody determination by the court of another state is as provided in MCL 722.1304. There is no fee for the registration of such a determination.

Rule 3.215 Domestic Relations Referees

(A) Qualifications of Referees. A referee appointed pursuant to MCL 552.507(1) must be a member in good standing of the State Bar of Michigan. A non-attorney friend of the court who was serving as a referee when this rule took effect on May 1, 1993, may continue to serve.

(B) Referrals to the Referee.

(1) The chief judge may, by administrative order, direct that specified types of domestic relations motions be heard initially by a referee.

(2) To the extent allowed by law, the judge to whom a domestic relations action is assigned may refer other motions in that action to a referee

(a) on written stipulation of the parties,

(b) on a party's motion, or

(c) on the judge's own initiative.

(3) In domestic relations matters, the judge to whom an action is assigned, or the chief judge by administrative order, may authorize referees to conduct settlement conferences and, subject to judicial review, scheduling conferences.

(C) Scheduling of the Referee Hearing.

(1) Within 14 days after receiving a motion referred under subrule (B)(1) or (B)(2), the referee must arrange for service of a notice scheduling a referee hearing on the attorneys for the parties, or on the parties if they are not represented by counsel. The notice of hearing must clearly state that the matter will be heard by a referee

(2) The referee may adjourn a hearing for good cause without preparing a recommendation for an order, except that if the adjournment is subject to any terms or conditions, the referee may only prepare a recommendation for an adjournment order to be signed by a judge.

(D) Conduct of Referee Hearings.

(1) The Michigan Rules of Evidence apply to referee hearings.

(2) A referee must provide the parties with notice of the right to request a judicial hearing by giving

(a) oral notice during the hearing, and

(b) written notice in the recommendation for an order.

(3) Testimony must be taken in person, except that, for a good cause, a referee may allow testimony to be taken by telephone or other electronically reliable means.

(4) An electronic or stenographic record must be kept of all hearings.

(a) The parties must be allowed to make contemporaneous copies of the record if the referee's recording equipment can make multiple copies simultaneously and if the parties supply the recording media. A recording made under this rule may be used solely to assist the parties during the proceeding recorded or, at the discretion of the trial judge, in any judicial hearing following an objection to the referee's recommended order; it may not be used publicly.

(b) If ordered by the court, or if stipulated by the parties, the referee must provide a transcript, verified by oath, of each hearing held. The cost of preparing a transcript must be apportioned equally between the parties, unless otherwise ordered by the court.

(c) At least 7 days before the judicial hearing, a party who intends to offer evidence from the record of the referee hearing must provide notice to the court and each other party. If a stenographic transcript is necessary, except as provided in subrule (4)(b), the party offering the evidence must pay for the transcript.

(d) If the court on its own motion uses the record of the referee hearing to limit the judicial hearing under subrule (F), the court must make the record available to the parties and must allow the parties to file supplemental objections within 7 days of the date the record is provided to the parties. Following the judicial hearing, the court may assess the costs of preparing a transcript of the referee hearing to one or more of the parties. This subrule does not apply when a party requests the court to limit the judicial hearing

under subrule (F) or when the court orders a transcript to resolve a dispute concerning what occurred at the referee hearing.

(E) Posthearing Procedures.

(1) Within 21 days after a hearing, the referee must either make a statement of findings on the record or submit a written, signed report containing a summary of testimony and a statement of findings. In either event, the referee must make a recommendation for an order and arrange for it to be submitted to the court and the attorneys for the parties, or the parties if they are not represented by counsel. A proof of service must be filed with the court.

(a) The referee must find facts specially and state separately the law the referee applied. Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts.

(b) The referee's recommended order must include:

(i) a signature line for the court to indicate its approval of the referee's recommended order;

(ii) notice that if the recommended order is approved by the court and no written objection is filed with the court clerk within 21 days after the recommended order is served, the recommended order will become the final order;

(iii) notice advising the parties of any interim effect the recommended order may have; and

(iv) prominent notice of all available methods for obtaining a judicial hearing.

(c) If the court approves the referee's recommended order, the recommended order must be served within 7 days of approval, or within 3 days of approval if the recommended order is given interim effect, and a proof of service must be filed with the court. If the recommendation is approved by the court and no written objection is filed with the court clerk within 21 days after service, the recommended order will become a final order.

(2) If the hearing concerns income withholding, the referee must arrange for a recommended order to be submitted to the court forthwith. If the recommended order is approved by the court, it must be given immediate effect pursuant to MCL 552.607(4).

(3) The recommended order may be prepared using any of the following methods:

(a) the referee may draft a recommended order;

(b) the referee may approve a proposed recommended order prepared by a party and submitted to the referee at the conclusion of the referee hearing;

(c) within 7 days of the date of the referee's findings, a party may draft a proposed recommended order and have it approved by all the parties and the referee; or

(d) within 7 days after the conclusion of the referee hearing, a party may serve a copy of a proposed recommended order on all other parties with a notice to them that it will be submitted to the referee for approval if no written objections to its accuracy or completeness are filed with the court clerk within 7 days after service of the notice. The party must file with the court clerk the original of the proposed recommended order and proof of its service on the other parties.

(i) If no written objections are filed within 7 days, the clerk shall submit the proposed recommended order to the referee for approval. If the referee does not approve the proposed recommended order, the referee may notify the parties to appear on a specified date for settlement of the matter.

(ii) To object to the accuracy or completeness of a proposed recommended order, the party must within 7 days after service of the proposed order, file written objections with the court clerk that state with specificity the inaccuracy or omission in the proposed recommended order, and serve the objections on all parties as required by MCR 2.107, together with a notice of hearing and an alternative proposed recommended order. Upon conclusion of the hearing, the referee shall sign the appropriate recommended order.

(4) A party may obtain a judicial hearing on any matter that has been the subject of a referee hearing and that resulted in a statement of findings and a recommended order by filing a written objection and notice of hearing within 21 days after the referee's recommendation for an order is served on the attorneys for the parties, or the parties if they are not represented by counsel. The objection must include a clear and concise statement of the specific findings or application of law to which an objection is made. Objections regarding the accuracy or completeness of the recommendation must state with specificity the inaccuracy or omission.

(5) The party who requests a judicial hearing must serve the objection and notice of hearing on the opposing party or counsel in the manner provided in MCR 2.119(C).

(6) A circuit court may, by local administrative order, establish additional methods for obtaining a judicial hearing.

(7) The court may hear a party's objection to the referee's recommendation for an order on the same day as the referee hearing, provided that the notice scheduling the referee hearing advises the parties that a same-day judicial hearing will be available and the parties have the option of refusing a same-day hearing if they have not yet decided whether they will object to the referee's recommendation for an order.

(8) The parties may waive their right to object to the referee's recommendation for an order by consenting in writing to the immediate entry of the recommended order.

(F) Judicial Hearings.

(1) The judicial hearing must be held within 21 days after the written objection is filed, unless the time is extended by the court for good cause.

(2) To the extent allowed by law, the court may conduct the judicial hearing by review of the record of the referee hearing, but the court must allow the parties to present live evidence at the judicial hearing. The court may, in its discretion:

(a) prohibit a party from presenting evidence on findings of fact to which no objection was filed;

(b) determine that the referee's finding was conclusive as to a fact to which no objection was filed;

(c) prohibit a party from introducing new evidence or calling new witnesses unless there is an adequate showing that the evidence was not available at the referee hearing;

(d) impose any other reasonable restrictions and conditions to conserve the resources of the parties and the court.

(3) If the court determines that an objection is frivolous or has been interposed for the purpose of delay, the court may assess reasonable costs and attorney fees.

(G) Interim Effect for Referee's Recommendation for an Order.

(1) Except as limited by subrules (G)(2) and (G)(3), the court may, by an administrative order or by an order in the case, provide that the referee's recommended order will take effect on an interim basis pending a judicial hearing. The court must provide notice that the referee's recommended order will be an interim order by including that notice under a separate heading in the referee's recommended order, or by an order adopting the referee's recommended order as an interim order.

(2) The court may not give interim effect to a referee's recommendation for any of the following orders:

(a) An order for incarceration;

(b) An order for forfeiture of any property;

(c) An order imposing costs, fines, or other sanctions.

(3) The court may not, by administrative order, give interim effect to a referee's recommendation for the following types of orders:

(a) An order under subrule (G)(2);

(b) An order that changes a child's custody;

(c) An order that changes a child's domicile;

(d) An order that would render subsequent judicial consideration of the matter moot.

Rule 3.216 Domestic Relations Mediation

(A) Scope and Applicability of Rule, Definitions.

(1) All domestic relations cases, as defined in MCL 552.502(l), are subject to mediation under this rule, unless otherwise provided by statute or court rule.

(2) Domestic relations mediation is a nonbinding process in which a neutral third party facilitates communication between parties to promote settlement. If the parties so request, and the mediator agrees to do so, the mediator may provide a written recommendation for settlement of any issues that remain unresolved at the conclusion of a mediation proceeding. This procedure, known as evaluative mediation, is governed by subrule (I).

(3) This rule does not restrict the Friend of the Court from enforcing custody, parenting time, and support orders.

(4) The court may order, on stipulation of the parties, the use of other settlement procedures.

(B) Mediation Plan. Each trial court that submits domestic relations cases to mediation under this rule shall include in its alternative dispute resolution plan adopted under MCR 2.410(B) provisions governing selection of domestic relations mediators, and for providing parties with information about mediation in the family division as soon as reasonably practical.

(C) Referral to Mediation.

(1) On written stipulation of the parties, on written motion of a party, or on the court's initiative, the court may submit to mediation by written order any contested issue in a domestic relations case, including postjudgment matters.

(2) The court may not submit contested issues to evaluative mediation unless all parties so request.

(3) Parties who are subject to a personal protection order or who are involved in a child abuse and neglect proceeding may not be referred to mediation without a hearing to determine whether mediation is appropriate.

(D) Objections to Referral to Mediation.

(1) To object to mediation, a party must file a written motion to remove the case from mediation and a notice of hearing of the motion, and serve a copy on the attorneys of record within 14 days after receiving notice of the order assigning the action to mediation. The motion must be set for hearing within 14 days after it is filed, unless the hearing is adjourned by agreement of counsel or unless the court orders otherwise.

(2) A timely motion must be heard before the case is mediated.

(3) Cases may be exempt from mediation on the basis of the following:

(a) child abuse or neglect;

(b) domestic abuse, unless attorneys for both parties will be present at the mediation session;

(c) inability of one or both parties to negotiate for themselves at the mediation, unless attorneys for both parties will be present at the mediation session;

(d) reason to believe that one or both parties' health or safety would be endangered by mediation; or

(e) for other good cause shown.

(E) Selection of Mediator.

(1) Domestic relations mediation will be conducted by a mediator selected as provided in this subrule.

(2) The parties may stipulate to the selection of a mediator. A mediator selected by agreement of the parties need not meet the qualifications set forth in subrule (G). The court must appoint a mediator stipulated to by the parties, provided the mediator is willing to serve within a period that would not interfere with the court's scheduling of the case for trial.

(3) If the parties have not stipulated to a mediator, the parties must indicate whether they prefer a mediator who is willing to conduct evaluative mediation. Failure to indicate a preference will be treated as not requesting evaluative mediation.

(4) If the parties have not stipulated to a mediator, the judge may recommend, but not appoint one. If the judge does not make a recommendation, or if the recommendation is not accepted by the parties, the ADR clerk will assign a mediator from the list of qualified mediators maintained under subrule (F). The assignment shall be made on a rotational basis, except that if the parties have requested evaluative mediation, only a mediator who is willing to provide an evaluation may be assigned.

(5) The rule for disqualification of a mediator is the same as that provided in MCR 2.003 for the disqualification of a judge. The mediator must promptly disclose any potential basis for disqualification.

(F) List of Mediators.

(1) Application. An eligible person desiring to serve as a domestic relations mediator may apply to the ADR clerk to be placed on the court's list of mediators. Application forms shall be available in the office of the ADR clerk.

(a) The form shall include a certification that

(i) the applicant meets the requirements for service under the court's selection plan;

(ii) the applicant will not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristic; and

(iii) the mediator will comply with the court's ADR plan, orders of the court regarding cases submitted to mediation, and the standards of conduct adopted by the State Court Administrator under subrule (K).

(b) The applicant shall indicate on the form whether the applicant is willing to offer evaluative mediation, and the applicant's hourly rate for providing mediation services.

(c) The form shall include an optional section identifying the applicant's gender and racial/ethnic background; however, this section shall not be made available to the public.

(2) Review of Applications. The court's ADR plan shall provide for a person or committee to review applications annually, or more frequently if appropriate, and compile a list of qualified mediators.

(a) Persons meeting the qualifications specified in this rule shall be placed on the list of approved mediators. Approved mediators shall be placed on the list for a fixed period, not to exceed 5 years, and must reapply at the end of that time in the same manner as persons seeking to be added to the list.

(b) Selections shall be made without regard to race, ethnic origin, or gender. Residency or principal place of business may not be a qualification.

(c) The approved list and the applications of approved mediators, except for the optional section identifying the applicant's gender and racial/ethnic background, shall be available to the public in the office of the ADR clerk.

(3) Rejection; Reconsideration. Applicants who are not placed on the list shall be notified of that decision. Within 21 days of notification of the decision to reject an application, the applicant may seek reconsideration of the ADR clerk's decision by the presiding judge of the family division. The court does not need to provide a hearing. Documents considered in the initial review process shall be retained for at least the period during which the applicant can seek reconsideration of the original decision.

(4) Removal from List. The ADR clerk may remove from the list mediators who have demonstrated incompetence, bias, made themselves consistently unavailable to serve as a mediator, or for other just cause. Within 21 days of notification of the decision to remove a mediator from the list, the mediator may seek reconsideration of the ADR clerk's decision by the presiding judge of the family division. The court does not need to provide a hearing.

(G) Qualification of Mediators.

(1) To be eligible to serve as a domestic relations mediator under this rule, an applicant must meet the following minimum qualifications:

(a) The applicant must

(i) be a licensed attorney, a licensed or limited licensed psychologist, a licensed professional counselor, or a licensed marriage and family therapist;

(ii) have a masters degree in counseling, social work, or marriage and family therapy;

(iii) have a graduate degree in a behavioral science; or

(iv) have 5 years experience in family counseling.

(b) The applicant must have completed a training program approved by the State Court Administrator providing the generally accepted components of domestic relations mediation skills.

(c) The applicant must have observed two domestic relations mediation proceedings conducted by an approved mediator, and have conducted one domestic relations mediation to conclusion under the supervision and observation of an approved mediator.

(2) An applicant who has specialized experience or training, but does not meet the specific requirements of subrule (G)(1), may apply to the ADR clerk for special approval. The ADR clerk shall make the determination on the basis of criteria provided by the State Court Administrator.

(3) Approved mediators are required to obtain 8 hours of advanced mediation training during each 2-year period. Failure to submit documentation establishing compliance is grounds for removal from the list under subrule(F)(4).

(4) Additional qualifications may not be imposed upon mediators.

(H) Mediation Procedure.

(1) The mediator must schedule a mediation session within a reasonable time at a location accessible by the parties.

(2) A mediator may require that no later than 3 business days before the mediation session, each party submit to the mediator, and serve on the opposing party, a mediation summary that provides the following information, where relevant:

(a) the facts and circumstances of the case;

(b) the issues in dispute;

(c) a description of the marital assets and their estimated value, where such information is appropriate and reasonably ascertainable;

(d) the income and expenses of the parties;

(e) a proposed settlement; and

(f) such documentary evidence as may be available to substantiate information contained in the summary.

Failure to submit these materials to the mediator within the designated time may subject the offending party to sanctions imposed by the court.

(3) The parties must attend the mediation session in person unless excused by the mediator.

(4) Except for legal counsel, the parties may not bring other persons to the mediation session, whether expert or lay witnesses, unless permission is first obtained from the mediator, after notice to opposing counsel. If the mediator believes it would be helpful to the settlement of the case, the mediator may request information or assistance from third persons at the time of the mediation session.

(5) The mediator shall discuss with the parties and counsel, if any, the facts and issues involved. The mediation will continue until a settlement is reached, the mediator determines that a settlement is not likely to be reached, the end of the first mediation session, or until a time agreed to by the parties.

(6) Within 7 days of the completion of mediation, the mediator shall so advise the court, stating only the date of completion of the process, who participated in the mediation, whether settlement was reached, and whether further ADR proceedings are contemplated. If an evaluation will be made under subrule (I), the mediator may delay reporting to the court until completion of the evaluation process.

(7) If a settlement is reached as a result of the mediation, to be binding, the terms of that settlement must be reduced to a signed writing by the parties or acknowledged by the parties on an audio or video recording. After a settlement has been reached, the parties shall take steps necessary to enter judgment as in the case of other settlements.

(8) Statements made during the mediation, including statements made in written submissions, may not be used in any other proceedings, including trial. Any communications between the parties or counsel and the mediator relating to a mediation are confidential and shall not be disclosed without the written consent of all parties. This prohibition does not apply to

(a) the report of the mediator under subrule (H)(6),

(b) information reasonably required by court personnel to administer and evaluate the mediation program,

(c) information necessary for the court to resolve disputes regarding the mediator's fee, or

(d) information necessary for the court to consider issues raised under MCR 2.410(D)(3) or 3.216(H)(2).

(I) Evaluative Mediation.

(1) This subrule applies if the parties requested evaluative mediation, or if they do so at the conclusion of mediation and the mediator is willing to provide an evaluation.

(2) If a settlement is not reached during mediation, the mediator, within a reasonable period after the conclusion of mediation shall prepare a written report to the parties setting forth the mediator's proposed recommendation for settlement purposes only. The mediator's recommendation shall be submitted to the parties of record only and may not be submitted or made available to the court.

(3) If both parties accept the mediator's recommendation in full, the attorneys shall proceed to have a judgment entered in conformity with the recommendation.

(4) If the mediator's recommendation is not accepted in full by both parties and the parties are unable to reach an agreement as to the remaining contested issues, mediator shall report to the court under subrule (H)(6), and the case shall proceed toward trial.

(5) A court may not impose sanctions against either party for rejecting the mediator's recommendation. The court may not inquire and neither the parties nor the mediator may inform the court of the identity of the party or parties who rejected the mediator's recommendation.

(6) The mediator's report and recommendation may not be read by the court and may not be admitted into evidence or relied upon by the court as evidence of any of the information contained in it without the consent of both parties. The court shall not request the parties' consent to read the mediator's recommendation.

(J) Fees.

(1) A mediator is entitled to reasonable compensation based on an hourly rate commensurate with the mediator's experience and usual charges for services performed.

(2) Before mediation, the parties shall agree in writing that each shall pay one-half of the mediator's fee no later than:

(a) 42 days after the mediation process is concluded or the service of the mediator's report and recommendation under subrule (I)(2), or

(b) the entry of judgment, or

(c) the dismissal of the action,

whichever occurs first. If the court finds that some other allocation of fees is appropriate, given the economic circumstances of the parties, the court may order that one of the parties pay more than one-half of the fee.

(3) If acceptable to the mediator, the court may order an arrangement for the payment of the mediator's fee other than that provided in subrule (J)(2).

(4) The mediator's fee is deemed a cost of the action, and the court may make an appropriate judgment under MCL 552.13(1) to enforce the payment of the fee.

(5) In the event either party objects to the total fee of the mediator, the matter may be scheduled before the trial judge for determination of the reasonableness of the fee.

(K) Standards of Conduct. The State Court Administrator shall develop and approve standards of conduct for domestic relations mediators designed to promote honesty, integrity, and impartiality in providing court-connected dispute resolution services. These standards shall be made a part of all training and educational

requirements for court-connected programs, shall be provided to all mediators involved in court-connected programs, and shall be available to the public.

Rule 3.217 Actions Under the Paternity Act

(A) Governing Law. Procedure in actions under the Paternity Act, MCL 722.711 *et seq.* is governed by the rules applicable to other civil actions except as otherwise provided by this rule and the act.

(B) Blood or Tissue Typing Tests. A petition for blood or tissue typing tests under MCL 722.716 must be filed at or before the pretrial conference or, if a pretrial conference is not held, within the time specified by the court. Failure to timely petition waives the right to such tests, unless the court, in the interest of justice, permits a petition at a later time.

(C) Advice Regarding Right to an Attorney.

(1) The summons issued under MCL 722.714 must include a form advising the alleged father of the right to an attorney as described in subrule (C)(2), and the procedure for requesting the appointment of an attorney. The form must be served with the summons and the complaint, and the proof of service must so indicate.

(2) If the alleged father appears in court following the issuance of a summons under MCL 722.714, the court must personally advise him that he is entitled to the assistance of an attorney, and that the court will appoint an attorney at public expense, at his request, if he is financially unable to retain an attorney of his choice.

(3) If the alleged father indicates that he wants to proceed without an attorney, the record must affirmatively show that he was given the advice required by subrule (C)(2) and that he waived the right to counsel.

(4) If the alleged father does not appear in court following the issuance of a summons under MCL 722.714, subrule (C)(3) does not apply.

(D) Visitation Rights of Noncustodial Parent.

(1) On the petition of either party, the court may provide in the order of filiation for such reasonable visitation by the noncustodial parent as the court deems justified and in the best interests of the child.

(2) Absent a petition from either party, the right of reasonable visitation is reserved.

Rule 3.218 Access to Friend of the Court Records

(A) General Definitions. When used in this subrule, unless the context indicates otherwise,

(1) "records" means paper files, computer files, microfilm, microfiche, audio tape, video tape, and photographs;

(2) "access" means inspection of records, obtaining copies of records upon receipt of payment for costs of reproduction, and oral transmission by staff of information contained in friend of the court records;

(3) "confidential information" means

(a) staff notes from investigations, mediation sessions, and settlement conferences;

(b) Family Independence Agency protective services reports;

(c) formal mediation records;

(d) communications from minors;

(e) friend of the court grievances filed by the opposing party and the responses;

(f) a party's address or any other information if release is prohibited by a court order;

(g) except as provided in MCR 3.219, any information for which a privilege could be claimed, or that was provided by a governmental agency subject to the express written condition that it remain confidential; and

(h) all information classified as confidential by the laws and regulations of title IV, part D of the Social Security Act, 42 USC 651 *et seq.*

(B) A party, third-party custodian, guardian, guardian ad litem or counsel for a minor, lawyer-guardian ad litem, and an attorney of record must be given access to friend of the court records related to the case, other than confidential information.

(C) A citizen advisory committee established under the Friend of the Court Act, MCL 552.501 *et seq.,*

(1) shall be given access to a grievance filed with the friend of the court, and to information related to the case, other than confidential information;

(2) may be given access to confidential information related to a grievance if the court so orders, upon clear demonstration by the committee that the information is necessary to the performance of its duties and that the release will not impair the rights of a party or the well-being of a child involved in the case.

When a citizen advisory committee requests information that may be confidential, the friend of the court shall notify the parties of the request and that they have 14 days from the date the notice was mailed to file a written response with the court. If the court grants access to the information, it may impose such terms and conditions as it determines are appropriate to protect the rights of a party or the well-being of a child.

(D) Protective services personnel from the Family Independence Agency must be given access to friend of the court records related to the investigation of alleged abuse and neglect.

(E) The prosecuting attorney and personnel from the Office of Child Support and the Family Independence Agency must be given access to friend of the court

records required to perform the functions required by title IV, part D of the Social Security Act, 42 USC 651 *et seq.*

(F) Auditors from state and federal agencies must be given access to friend of the court records required to perform their audit functions.

(G) Any person who is denied access to friend of the court records or confidential information may file a motion for an order of access with the judge assigned to the case or, if none, the chief judge.

(H) A court, by administrative order adopted pursuant to MCR 8.112(B), may make reasonable regulations necessary to protect friend of the court records and to prevent excessive and unreasonable interference with the discharge of friend of the court functions.

Rule 3.219 Dissemination of a Professional Report

If there is a dispute involving custody, visitation, or change of domicile, and the court uses a community resource to assist its determination, the court must assure that copies of the written findings and recommendations of the resource are provided to the friend of the court and to the attorneys of record for the parties, or the parties if they are not represented by counsel. The attorneys for the parties, or the parties if they are not represented by counsel, may file objections to the report before a decision is made.

Rule 3.221 Hearings on Support and Parenting Time Enforcement Act Bench Warrants

(A) Definitions.

(1) Unless the context indicates otherwise, the term "bond" means the performance bond required by MCL 552.631.

(2) The term "cash" means money or the equivalent of money, such as a money order, cashier's check, or negotiable check or a payment by debit or credit card, which equivalent is accepted as cash by the agency accepting the payment.

(3) Unless the context indicates otherwise, the term "person," when used in this rule, means a party who has been arrested on a bench warrant issued pursuant to MCL 552.631.

(B) Hearing on the Merits. The court shall hold a hearing in connection with the matter in which the warrant was issued within 21 days of the date of arrest. Except as provided in this rule, a person who does not post a bond, within 48 hours of arrest excluding weekends and holidays, shall be brought before the court that issued the warrant for further proceedings on the matter in which the warrant was issued. The hearing may be adjourned when necessary to give notice of the proceedings to another party or to receive additional evidence. In the event the hearing is adjourned, the court shall set terms of release under subrule (F). Failure to hold a hearing within 21 days will not deprive the court of jurisdiction to proceed.

(C) Bond Review Hearing. A person who has not posted a bond, and whose case cannot be heard as provided in subrule (B), must without unnecessary delay be brought before a judge, magistrate, or referee for a review of the bond.

(D) Place of Bond Review Hearing. Except as otherwise provided in this subrule, a bond review hearing under subrule (E) must be held in the circuit court specified in the warrant. If a person is arrested in a circuit other than the one specified in the warrant, the arresting agency must make arrangements to assure that the person is promptly transported to the court specified in the warrant for a hearing in accordance with the provisions of this rule. If prompt transportation cannot be arranged, the bond review hearing must be held in the jurisdiction in which the individual is being held.

(E) Conduct of Bond Review Hearing. At the bond review hearing, the person must be advised of the purpose of the hearing on the merits and a determination must be made of what form of prehearing release is appropriate. A verbatim record must be made of the bond review hearing. Pending the hearing required under subrule (B), the person must be released on conditions under subrule (F).

(F) Conditional Release. The person must be released on condition that the person will appear for a hearing under subrule (B) and any other conditions that are appropriate to ensure that the person will appear as required for a hearing under subrule (B), including requiring the person to:

(1) make reports to a court agency as required by the court or the agency;

(2) comply with restrictions on personal associations, place of residence, place of employment, or travel;

(3) surrender driver's license or passport;

(4) comply with a specified curfew;

(5) continue or seek employment or participate in a work program;

(6) continue or begin an educational program;

(7) remain in the custody of a responsible member of the community who agrees to monitor the person and report any violation of any release condition to the court;

(8) post a bond as described in subrule (G).

In the event the person cannot satisfy a condition of release, the arresting agency must make arrangements with the authorities in the county of the court specified in the warrant to have the person promptly transported to that county for a hearing in accordance with the provisions of this rule.

(G) Performance Bond Modification. If it is determined for reasons stated on the record that the person's appearance cannot otherwise be assured, the person, in addition to any conditions described in subrule (F), may be required to post a bond at the person's option, executed:

(1) by the person, or by another who is not a licensed surety, and secured by a cash deposit for the full bond amount, or

(2) by a surety approved by the court.

(H) Decision; Statement of Reasons.

(1) In deciding what terms and conditions to impose under subrule (F), relevant information, including the following shall be considered:

(a) the person's record for reporting information to the friend of the court and complying with court orders;

(b) the person's record of appearance or nonappearance at court proceedings;

(c) the person's history of substance abuse or addiction;

(d) the amount of support owed;

(e) the person's employment status and history and financial history insofar as these factors relate to the ability to post bond;

(f) the availability of responsible members of the community who would vouch for or monitor the person;

(g) facts indicating the person's ties to the community, including family ties and relationships, and length of residence; and

(h) any other facts bearing on the risk of nonappearance.

(2) The reasons for requiring a bond under subrule (F), must be stated on the record. A finding on each of the enumerated factors is not necessary.

(3) Nothing in this rule may be construed to sanction the determination of prehearing release on the basis of race, religion, gender, economic status, or other impermissible criteria.

(I) Review; Modification of Release Decision.

(1) Review. A party seeking review of a release decision may file a motion in the court having appellate jurisdiction over the decision maker. If the decision was made by a magistrate or referee, a party is entitled to a new hearing. Otherwise, the reviewing court may not stay, vacate, modify, or reverse the release decision except on finding an abuse of discretion.

(2) Emergency Release. If a person is ordered released from custody as a result of a court order or law requiring the release of prisoners to relieve jail conditions, the court ordering the release shall impose conditions of release in accordance with this rule to ensure the appearance of the individual as required. If such conditions of release are imposed, the court must inform the person of the conditions on the record or by furnishing to the person or the person's lawyer a copy of the release order setting forth the conditions.

(J) Termination of Release Order.

(1) After a bond is set pursuant to subrule (G), if the person appears for the hearing in subrule (B) the court must vacate the release order, discharge a third party who has posted the bond, and return the cash posted in the full amount of a bond. At the court's discretion, an arrested person who has

deposited money with the court may be required to forfeit all or a portion of the amount to pay support, fines, fees, costs, and sanctions.

(2) If the person fails to comply with any conditions of release, the court that issued the original bench warrant may issue a new bench warrant for the person's arrest and enter an order revoking the release order and declaring the bond, if any, forfeited.

(a) The court must mail notice of any revocation order immediately to the person at the person's last known address and, if forfeiture of bond has been ordered, to anyone who posted bond.

(b) If the person does not appear and surrender to the court within 28 days after the revocation date or does not within the period satisfy the court that there was compliance with the conditions of release or that compliance was impossible through no fault of the person, the court may continue the revocation order and enter judgment forfeiting the bond against the individual and anyone who posted bond for the entire amount of the bond and costs of the court proceedings and costs associated with the arrest.

(K) Plan for Remote Bond Review Hearings. In each county, the court with trial jurisdiction over friend of the court cases must adopt and file with the State Court Administrator a plan for conducting bond review hearings on bench warrants issued as a result of a show cause hearing when the person is arrested in another county and cannot be transported immediately. The plan shall provide for the use of available technology for a person's appearance and the transmission and presentation of evidence in hearings under this rule.

Subchapter 3.300 Extraordinary Writs

Rule 3.301 Extraordinary Writs in General

(A) Applicability and Scope of Rules.

(1) A civil action or appropriate motion in a pending action may be brought to obtain

(a) superintending control,

(b) habeas corpus,

(c) mandamus, or

(d) quo warranto.

Unless a particular rule or statute specifically provides otherwise, an original action may not be commenced in the Supreme Court or the Court of Appeals if the circuit court would have jurisdiction of an action seeking that relief.

(2) These special rules govern the procedure for seeking the writs or relief formerly obtained by the writs, whether the right to relief is created by statute or common law. If the right to relief is created by statute, the limitations on relief in the statute apply, as well as the limitations on relief in these rules.

(3) The general rules of procedure apply except as otherwise provided in this subchapter.

(B) Joinder of Claims. More than one kind of writ may be sought in an action either as an independent claim or as an alternative claim. Subject to MCR 2.203, other claims may be joined in an action for a writ or writs.

(C) Process; Service of Writs. Process must be issued and served as in other civil actions. However, if a writ, order, or order to show cause is issued before service of process, then service of the writ, order, or order to show cause in the manner prescribed in MCR 2.105, accompanied by a copy of the complaint, makes service of other process unnecessary.

(D) Assignment for Trial. Actions brought under these special rules may be given precedence under MCR 2.501(B).

(E) Records. The action taken on applications for writs or orders to show cause must be noted in court records in the same manner as actions taken in other civil actions.

(F) No Automatic Stay. The automatic stay provisions of MCR 2.614(A) do not apply to judgments in actions brought under this subchapter.

(G) Procedure Where Relief Is Sought in Supreme Court or Court of Appeals.

(1) MCR 7.304 applies to original proceedings brought in the Supreme Court to obtain relief under this subchapter.

(2) MCR 7.206 applies to original proceedings brought in the Court of Appeals to obtain relief under this subchapter.

Rule 3.302 Superintending Control

(A) Scope. A superintending control order enforces the superintending control power of a court over lower courts or tribunals.

(B) Policy Concerning Use. If another adequate remedy is available to the party seeking the order, a complaint for superintending control may not be filed. See subrule (D)(2), and MCR 7.101(A)(2), and 7.304(A).

(C) Writs Superseded. A superintending control order replaces the writs of certiorari and prohibition and the writ of mandamus when directed to a lower court or tribunal.

(D) Jurisdiction.

(1) The Supreme Court, the Court of Appeals, and the circuit court have jurisdiction to issue superintending control orders to lower courts or tribunals. In this rule the term "circuit court" includes the Recorder's Court of the City of Detroit as to superintending control actions of which that court has jurisdiction.

(2) When an appeal in the Supreme Court, the Court of Appeals, the circuit court, or the recorder's court is available, that method of review must be used. If superintending control is sought and an appeal is available, the complaint for superintending control must be dismissed.

(E) Procedure for Superintending Control in Circuit Court.

(1) Complaint. A person seeking superintending control in the circuit court must file a complaint with the court. Only the plaintiff's name may appear in the title of the action (for example, *In re Smith*). The plaintiff must serve a copy of the complaint on the court or tribunal over which superintending control is sought. If the superintending control action arises out of a particular action, a copy of the complaint must also be served on each other party to the proceeding in that court or tribunal.

(2) Answer. Anyone served under subrule (E)(1) may file an answer within 21 days after the complaint is served.

(3) Issuance of Order; Dismissal.

(a) After the filing of a complaint and answer or, if no answer is filed, after expiration of the time for filing an answer, the court may

(i) issue an order to show cause why the order requested should not be issued,

(ii) issue the order requested, or

(iii) dismiss the complaint.

(b) If a need for immediate action is shown, the court may enter an order before an answer is filed.

(c) The court may require in an order to show cause that additional records and papers be filed.

(d) An order to show cause must specify the date for hearing the complaint.

Rule 3.303 Habeas Corpus to Inquire Into Cause of Detention

(A) Jurisdiction and Venue; Persons Detained on Criminal Charges.

(1) An action for habeas corpus to inquire into the cause of detention of a person may be brought in any court of record except the probate court.

(2) The action must be brought in the county in which the prisoner is detained. If it is shown that there is no judge in that county empowered and available to issue the writ or that the judicial circuit for that county has refused to issue the writ, the action may be brought in the Court of Appeals.

(3) A prisoner detained in a county jail for a criminal charge, who has not been sentenced to detention by a court of competent jurisdiction, may be removed from detention by a writ of habeas corpus to inquire into the cause of detention only if the writ is issued by the court in which the prisoner would next appear if the criminal process against the prisoner continued, or by the judicial circuit for the county in which the prisoner is detained. This subrule does not limit the power of the Court of Appeals or Supreme Court to issue the writ.

(B) Who May Bring. An action for habeas corpus may be brought by the prisoner or by another person on the prisoner's behalf.

(C) Complaint. The complaint must state:

(1) that the person on whose behalf the writ is applied for (the prisoner) is restrained of his or her liberty;

(2) the name, if known, or the description of the prisoner;

(3) the name, if known, or the description of the officer or person by whom the prisoner is restrained;

(4) the place of restraint, if known;

(5) that the action for habeas corpus by or on behalf of the prisoner is not prohibited;

(6) the cause or pretense of the restraint, according to the plaintiff's best knowledge and belief; and

(7) why the restraint is illegal.

(D) Issuance of the Writ or Order to Show Cause.

(1) On the filing of the complaint, the court may issue

(a) a writ of habeas corpus directed to the person having custody of the prisoner, or that person's superior, ordering him or her to bring the prisoner before the court forthwith; or

(b) an order to show cause why the writ should not be issued, unless it appears that the prisoner is not entitled to relief.

(2) On the showing required by MCL 600.4337, the court may issue a warrant in lieu of habeas corpus.

(3) Duplicate original writs may be issued.

(E) Certification of Record. When proceedings in another court or agency are pertinent to a determination of the issue raised in a habeas corpus action, the court may order the transcript of the record and proceedings certified to the court within a specified time. The order must identify the records to be certified with sufficient specificity to allow them to be located.

(F) Issuance Without Application or Before Filing.

(1) A judge of a court of record, except the probate court, may issue a writ of habeas corpus or order to show cause if

(a) the judge learns that a person within the judge's jurisdiction is illegally restrained, or

(b) an application is presented to the judge before or after normal court hours.

(2) If the prisoner is being held on criminal charges, the writ or order may only be issued by a judge of a court authorized to issue a writ of habeas corpus under subrule (A)(3).

(3) If a complaint is presented to a judge under the provisions of subrule (F)(1)(b), it need not be filed with the court before the issuance of a writ of habeas corpus. The complaint must subsequently be filed with the court whether or not the writ is granted.

(G) Endorsement of Allowance of Writ. Every writ issued must be endorsed with a certificate of its allowance and the date of the allowance. The endorsement must be signed by the judge issuing the writ, or, if the writ is issued by a panel of more than 1 judge, by a judge of the court.

(H) Form of Writ. A writ of habeas corpus must be substantially in the form approved by the state court administrator.

(I) Service of Writ.

(1) Person to be Served. The writ or order to show cause must be served on the defendant in the manner prescribed in MCR 2.105. If the defendant cannot be found, or if the defendant does not have the prisoner in custody, the writ or order to show cause may be served on anyone having the prisoner in custody or that person's superior, in the manner and with the same effect as if that person had been made a defendant in the action.

(2) Tender of Fees. If the Attorney General or a prosecuting attorney brings the action, or if a judge issues the writ on his or her own initiative, there is no fee. In other actions, to make the service of a writ of habeas corpus effective, the person making service must give the fee provided by law or this rule to the person having custody of the prisoner or to that person's superior.

(a) If the prisoner is in the custody of a sheriff, coroner, constable, or marshal, the fee is that allowed by law to a sheriff for bringing up a prisoner.

(b) If the prisoner is in the custody of another person, the fee is that, if any, allowed by the court issuing the writ, not exceeding the fee allowed by law to a sheriff for similar services.

(J) Sufficiency of Writ. The writ or order to show cause may not be disobeyed because of a defect in form. The writ or order to show cause is sufficient if the prisoner is designated by name, if known, or by a description sufficient to permit identification. The writ or order may designate the person to whom it is directed as the person having custody of the prisoner. Anyone served with the writ or order is deemed the person to whom it is directed and is considered a defendant in the action.

(K) Time for Answer and Hearing.

(1) If the writ is to be answered and the hearing held on a specified day and hour, the answer must be made and the prisoner produced at the time and place specified in the writ.

(2) If an order to show cause is issued, it must be answered as provided in subrule (N), and the hearing must be held at the time and place specified in the order.

(L) Notice of Hearing Before Discharge.

(1) When the answer states that the prisoner is in custody on process under which another person has an interest in continuing the custody, an order of discharge may not be issued unless the interested person or that person's attorney has had at least 4 days' notice of the time and place of the hearing.

(2) When the answer states that the prisoner is detained on a criminal charge, the prisoner may not be discharged until sufficient notice of the time and place of the hearing is given to the prosecuting attorney of the county within which the prisoner is detained or, if there is no prosecuting attorney within the county, to the Attorney General.

(M) Habeas Corpus to Obtain Custody of Child.

(1) A complaint seeking a writ of habeas corpus to inquire into a child's custody must be presented to the judicial circuit for the county in which the child resides or is found.

(2) An order to show cause, not a writ of habeas corpus, must be issued initially if the action is brought by a parent, foster parent, or other relative of the child, to obtain custody of a child under the age of 16 years from a parent, foster parent, or other relative of the child. The court may direct the friend of the court to investigate the circumstances of the child's custody.

(N) Answer.

(1) Contents of Answer; Contempt. The defendant or person served must obey the writ or order to show cause or show good cause for not doing so, and must answer the writ or order to show cause within the time allowed. Failure to file an answer is contempt. The answer must state plainly and unequivocally

(a) whether the defendant then has, or at any time has had, the prisoner under his or her control and, if so, the reason; and

(b) if the prisoner has been transferred, to whom, when the transfer was made, and the reason or authority for the transfer.

(2) Exhibits. If the prisoner is detained because of a writ, warrant, or other written authority, a copy must be attached to the answer as an exhibit, and the original must be produced at the hearing. If an order under subrule (E) requires it, the answer must be accompanied by the certified transcript of the record and proceedings.

(3) Verification. The answer must be signed by the person answering, and, except when the person is a sworn public officer and answers in his or her official capacity, it must be verified by oath.

(O) Answer May Be Controverted. In a reply or at a hearing, the plaintiff or the prisoner may controvert the answer under oath, to show either that the restraint is unlawful or that the prisoner is entitled to discharge.

(P) Prisoner; When Bailed. Because a habeas corpus action must be decided promptly with no more than the brief delay provided by subrule (Q)(2), release of a prisoner on bail will not normally be considered until after determination that legal cause exists for the detention. Thereafter, if the prisoner is entitled to bail, the court issuing the writ or order may set bail.

(Q) Hearing and Judgment.

(1) The court shall proceed promptly to hear the matter in a summary manner and enter judgment.

(2) In response to the writ of habeas corpus or order to show cause, the defendant may request adjournment of the hearing. Adjournment may be granted only for the brief delay necessary to permit the defendant

(a) to prepare a written answer (unless waived by the plaintiff); or

(b) to present to the court or judge issuing the writ or order testimonial or documentary evidence to establish the cause of detention at the time for answer.

(3) In the defendant's presence, the court shall inform the prisoner that he or she has the right to an attorney and the right to remain silent.

(4) From the time the prisoner is produced in response to the writ or order until judgment is entered, the judge who issued the writ or order has custody of the prisoner and shall make certain that the prisoner's full constitutional rights are protected.

(5) The hearing on the return to a writ of habeas corpus or an order to show cause must be recorded verbatim, unless a court reporter or recorder is not available. If the hearing is conducted without a verbatim record being made, as soon as possible the judge shall prepare and certify a narrative written report. The original report is part of the official record in the action, and copies must be sent forthwith to the parties or their attorneys.

(6) If the prisoner is restrained because of mental disease, the court shall consider the question of the prisoner's mental condition at the time of the hearing, rather than merely the legality of the original detention.

Rule 3.304 Habeas Corpus to Bring Prisoner to Testify or for Prosecution

(A) Jurisdiction; When Available. A court of record may issue a writ of habeas corpus directing that a prisoner in a jail or prison in Michigan be brought to testify

(1) on the court's own initiative; or

(2) on the ex parte motion of a party in an action before a court or an officer or body authorized to examine witnesses.

A writ of habeas corpus may also be issued to bring a prisoner to court for prosecution. Subrules (C)-(G) apply to such a writ.

(B) Contents of Motion. The motion must be verified by the party and must state

(1) the title and nature of the action in which the testimony of the prisoner is desired; and

(2) that the testimony of the prisoner is relevant and necessary to the party in that proceeding.

(C) Direction to Surrender Custody for Transportation. The writ may direct that the prisoner be placed in the custody of a designated officer for transportation to the place where the hearing or trial is to be held, rather than requiring the custodian to bring the prisoner to that place.

(D) Form of Writ. A writ of habeas corpus to produce a prisoner to testify or for prosecution must be substantially in the form approved by the state court administrator.

(E) Answer and Hearing. If the prisoner is produced or delivered to the custody of a designated officer as ordered, the person served with the writ need not answer the writ, and a hearing on the writ is unnecessary.

(F) Remand. When a prisoner is brought on a writ of habeas corpus to testify or for prosecution, the prisoner must be returned to the original custodian after testifying or prosecution.

(G) Applicability of Other Rules. MCR 3.303(G), (I), (J), and (K)(1) apply to habeas corpus to produce a prisoner to testify or for prosecution.

Rule 3.305 Mandamus

(A) Jurisdiction.

(1) An action for mandamus against a state officer may be brought in the Court of Appeals or the circuit court.

(2) All other actions for mandamus must be brought in the circuit court unless a statute or rule requires or allows the action to be brought in another court.

(B) Venue.

(1) The general venue statutes and rules apply to actions for mandamus unless a specific statute or rule contains a special venue provision.

(2) In addition to any other county in which venue is proper, an action for mandamus against a state officer may be brought in Ingham County.

(C) Order to Show Cause. On ex parte motion and a showing of the necessity for immediate action, the court may issue an order to show cause. The motion may be made in the complaint. The court shall indicate in the order when the defendant must answer the order.

(D) Answer. If necessity for immediate action is not shown, and the action is not dismissed, the defendant must answer the complaint as in an ordinary civil action.

(E) Exhibits. A party may attach to the pleadings, as exhibits, certified or authenticated copies of record evidence on which the party relies.

(F) Hearings in Circuit Court. The court may hear the matter or may allow the issues to be tried by a jury.

(G) Writ Contained in Judgment. If the judgment awards a writ of mandamus, the writ may be contained in the judgment in the form of an order, and a separate writ need not be issued or served.

Rule 3.306 Quo Warranto

(A) Jurisdiction.

(1) An action for quo warranto against a person who usurps, intrudes into, or unlawfully holds or exercises a state office, or against a state officer who does or suffers an act that by law works a forfeiture of the office, must be brought in the Court of Appeals.

(2) All other actions for quo warranto must be brought in the circuit court.

(B) Parties.

(1) Actions by Attorney General. An action for quo warranto is to be brought by the Attorney General when the action is against:

(a) a person specified in subrule (A)(1);

(b) a person who usurps, intrudes into, or wrongfully holds or exercises an office in a public corporation created by this state's authority;

(c) an association, or number of persons, acting as a corporation in Michigan without being legally incorporated;

(d) a corporation that is in violation of a provision of the act or acts creating, offering, or renewing the corporation;

(e) a corporation that has violated the provisions of a law under which the corporation forfeits its charter by misuse;

(f) a corporation that has forfeited its privileges and franchises by nonuse;

(g) a corporation that has committed or omitted acts that amount to a surrender of its corporate rights, privileges, and franchises, or has exercised a franchise or privilege not conferred on it by law.

(2) Actions by Prosecutor or Citizen. Other actions for quo warranto may be brought by the prosecuting attorney of the proper county, without leave of court, or by a citizen of the county by special leave of the court.

(3) Application to Attorney General.

(a) A person may apply to the Attorney General to have the Attorney General bring an action specified in subrule (B)(1). The Attorney General may require the person to give security to indemnify the state against all costs and expenses of the action. The person making the application, and any other person having the proper interest, may be joined as parties plaintiff.

(b) If, on proper application and offer of security, the Attorney General refuses to bring the action, the person may apply to the appropriate court for leave to bring the action himself or herself.

(C) Person Alleged to be Entitled to Office. If the action is brought against the defendant for usurping an office, the complaint may name the person rightfully entitled to the office, with an allegation of his or her right to it, and that person may be made a party.

(D) Venue. The general venue statutes and rules apply to actions for quo warranto, unless a specific statute or rule contains a special venue provision applicable to an action for quo warranto.

(E) Hearing. The court may hear the matter or may allow the issues to be tried by a jury.

Rule 3.310 Injunctions

(A) Preliminary Injunctions.

(1) Except as otherwise provided by statute or these rules, an injunction may not be granted before a hearing on a motion for a preliminary injunction or on an order to show cause why a preliminary injunction should not be issued.

(2) Before or after the commencement of the hearing on a motion for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing on the motion. Even when consolidation is not ordered, evidence received at the hearing for a preliminary injunction that would be admissible at the trial on the merits becomes part of the trial record and need not be repeated at the trial. This provision may not be used to deny the parties any rights they may have to trial by jury.

(3) A motion for a preliminary injunction must be filed and noticed for hearing in compliance with the rules governing other motions unless the court orders otherwise on a showing of good cause.

(4) At the hearing on an order to show cause why a preliminary injunction should not issue, the party seeking injunctive relief has the burden of

establishing that a preliminary injunction should be issued, whether or not a temporary restraining order has been issued.

(5) If a preliminary injunction is granted, the court shall promptly schedule a pretrial conference. The trial of the action on the merits must be held within 6 months after the injunction is granted, unless good cause is shown or the parties stipulate to a longer period. The court shall issue its decision on the merits within 56 days after the trial is completed.

(B) Temporary Restraining Orders.

(1) A temporary restraining order may be granted without written or oral notice to the adverse party or the adverse party's attorney only if

(a) it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant from the delay required to effect notice or from the risk that notice will itself precipitate adverse action before an order can be issued;

(b) the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required; and

(c) a permanent record or memorandum is made of any nonwritten evidence, argument, or other representations made in support of the application.

(2) A temporary restraining order granted without notice must:

(a) be endorsed with the date and time of issuance;

(b) describe the injury and state why it is irreparable and why the order was granted without notice;

(c) except in domestic relations actions, set a date for hearing at the earliest possible time on the motion for a preliminary injunction or order to show cause why a preliminary injunction should not be issued.

(3) Except in domestic relations actions, a temporary restraining order granted without notice expires by its terms within such time after entry, not to exceed 14 days, as the court sets unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension must be stated on the record or in a document filed in the action.

(4) A temporary restraining order granted without notice must be filed forthwith in the clerk's office and entered in the court records.

(5) A motion to dissolve a temporary restraining order granted without notice takes precedence over all matters except older matters of the same character, and may be heard on 24 hours' notice. For good cause shown, the court may order the motion heard on shorter notice. The court may set the time for the hearing at the time the restraining order is granted, without waiting for the

filing of a motion to dissolve it, and may order that the hearing on a motion to dissolve a restraining order granted without notice be consolidated with the hearing on a motion for a preliminary injunction or an order to show cause why a preliminary injunction should not be issued. At a hearing on a motion to dissolve a restraining order granted without notice, the burden of justifying continuation of the order is on the applicant for the restraining order whether or not the hearing has been consolidated with a hearing on a motion for a preliminary injunction or an order to show cause.

(C) Form and Scope of Injunction. An order granting an injunction or restraining order

(1) must set forth the reasons for its issuance;

(2) must be specific in terms;

(3) must describe in reasonable detail, and not by reference to the complaint or other document, the acts restrained; and

(4) is binding only on the parties to the action, their officers, agents, servants, employees, and attorneys, and on those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(D) Security.

(1) Before granting a preliminary injunction or temporary restraining order, the court may require the applicant to give security, in the amount the court deems proper, for the payment of costs and damages that may be incurred or suffered by a party who is found to have been wrongfully enjoined or restrained.

(2) Security is not required of the state or of a Michigan county or municipal corporation or its officer or agency acting in an official capacity. As to other parties, if security is not required the order must state the reason.

(3) If the party enjoined deems the security insufficient and has had no prior opportunity to be heard, the party may object to the sufficiency of the surety in the manner provided in MCR 3.604(E). The procedures provided in MCR 3.604(F) apply to the objection.

(4) When a bond is required before the issuance of an injunction or temporary restraining order, the bond must be filed with the clerk before the sealing and delivery of the injunction or restraining order.

(E) Stay of Action. An injunction or temporary restraining order may not be granted in one action to stay proceedings in another action pending in another court if the relief requested could be sought in the other pending action.

(F) Denial of Application. When an application for a preliminary injunction or temporary restraining order is denied, but an order is not signed, an endorsement of the denial must be made on the complaint or affidavit, and the complaint or affidavit filed.

(G) Later Application After Denial of Injunction.

(1) If a circuit judge has denied an application for an injunction or temporary restraining order, in whole or in part, or has granted it conditionally or on terms, later application for the same purpose and in relation to the same matter may not be made to another circuit judge.

(2) If an order is entered on an application in violation of subrule (G)(1), it is void and must be revoked by the judge who entered it, on due proof of the facts. A person making the later application contrary to this rule is subject to punishment for contempt.

(H) Motion for Injunction in Pending Actions. An injunction may also be granted before or in connection with final judgment on a motion filed after an action is commenced.

(I) Application to Special Actions. This rule applies to a special statutory action for an injunction only to the extent that it does not conflict with special procedures prescribed by the statute or the rules governing the special action.

Subchapter 3.400 Proceedings Involving Real Property

Rule 3.401 Partition

(A) Matters to be Determined by Court. On the hearing of an action or proceeding for partition, the court shall determine

(1) whether the premises can be partitioned without great prejudice to the parties;

(2) the value of the use of the premises and of improvements made to the premises; and

(3) other matters the court considers pertinent.

(B) Partition or Sale in Lieu of Partition. If the court determines that the premises can be partitioned, MCR 3.402 governs further proceedings. If the court determines that the premises cannot be partitioned without undue prejudice to the owners, it may order the premises sold in lieu of partition under MCR 3.403.

(C) Joinder of Lienholders. A creditor having a lien on all or part of the premises, by judgment, mortgage, or otherwise, need not be made a party to the partition proceedings. However, the plaintiff may join every creditor having a specific lien on the undivided interest or estate of a party. If the creditors are made parties, the complaint must state the nature of every lien or encumbrance.

Rule 3.402 Partition Procedure

(A) Determination of Parties' Interests. In ordering partition the court shall determine the rights and interests of the parties in the premises, and describe parts or shares that are to remain undivided for owners whose interests are unknown or not ascertained.

(B) Appointment of Partition Commissioner.

(1) The court shall appoint a disinterested person as partition commissioner to make the partition according to the court's determination of the rights and interests of the parties. If the parties agree, three commissioners may be appointed who shall meet together to perform their duties and act by majority vote.

(2) The partition commissioner must be sworn before an officer authorized to administer oaths to honestly and impartially partition the property as directed by the court. The oath must be filed with the clerk of the court.

(3) If the partition commissioner dies, resigns, or neglects to serve, the court may appoint a replacement.

(C) Proceedings Before Partition Commissioner.

(1) The partition commissioner

(a) may apply to the court for instructions;

(b) must give notice of the meeting to consider the problems of the partition to the parties so that they may be heard if they wish to be; and

(c) may take evidence at the meeting concerning the problems of partition.

(2) The partition commissioner shall divide the premises and allot the respective shares according to the terms in the court's judgment or separate order, and shall designate the several shares and portions by reference to a plat or survey prepared by a land surveyor or engineer licensed by the state.

(3) The partition commissioner must report to the court, specifying the procedures followed, describing the land divided and the shares allotted to each party, and listing the commissioner's charges. The parties shall not be present during the preparation of the report or during the deliberations of a panel of three commissioners. A copy of the report must be sent to each party who has appeared in the action.

(D) Setting Aside, Modification, or Confirmation of Partition Commissioner's Report.

(1) The court may modify or set aside the report and may refer the action to either the same or a newly appointed partition commissioner as often as necessary.

(2) On confirming the report, the court shall enter a judgment binding and conclusive on:

(a) all parties named in the action who

(i) have an interest in the partitioned premises as owners in fee or tenants for years,

(ii) are entitled to the reversion, remainder, or inheritance of the premises after the termination of a particular estate in the premises,

(iii) are or will become entitled to a beneficial interest in the premises, or

(iv) have an interest in an undivided share of the premises as tenants for years, for life, or in dower;

(b) the legal representatives of the parties listed in subrule (D)(2)(a);

(c) all persons interested in the premises who were unknown at the time the action was commenced and were given sufficient notice either by publication or personally; and

(d) all other persons claiming from any of the above parties or persons.

(3) The judgment and partition do not affect persons who have claims as tenants in dower or for life to the entire premises subject to the partition; nor do they preclude a person, except those specified in subrule (D)(2), from claiming title to the premises in question or from controverting the title or interest of the parties among whom the partition was made.

(4) An authenticated copy of the report, the judgment confirming it, and any incorporated surveys may be recorded with the register of deeds of the county

in which the land is located. Copies of subdivision plats already of record need not be recorded.

(E) Expenses and Costs. The court may order that the expenses and costs, including attorney fees, be paid by the parties in accordance with their respective rights and equities in the premises. An order requiring a party to pay expenses and costs may be enforced in the same manner as a judgment.

(F) Setting Off of Interests in Special Cases.

(1) The court may by order set off the interest that belonged to a deceased party, without subdivision, to those claiming under that party when it is expedient to do so. Those legally entitled under or through the deceased party must be mentioned by name in the judgment.

(2) If the original parties in interest were fully known, but death, legal proceedings, or other operation of law has caused uncertainty about the identity of the present parties in interest, the interests originally owned by known parties but now owned by unknown persons may be separated as provided in this rule, instead of being left undivided. The division and judgment operate to convey the title to the persons claiming under the known party, according to their legal rights.

(3) If an interest in the premises belongs to known or unknown parties who have not appeared in the action, the court shall order partition of the ascertained interests of the known parties who have appeared in the action. The residue of the premises remains for the parties whose interests have not been ascertained, subject to future division.

Rule 3.403 Sale of Premises and Division of Proceeds as Substitute for Partition

(A) Order of Sale.

(1) If a party has a dower interest or life estate in all or a part of the premises at the time of the order for sale, the court shall determine whether, under all the circumstances and with regard for the interests of all the parties, that interest should be excepted from the sale or be sold with the premises. If the court orders that the sale include that party's interest, the sale conveys that interest.

(2) In the order of sale the court shall designate:

(a) which premises are to be sold;

(b) whether the premises are to be sold in separate parcels or together;

(c) whether there is a minimum price at which the premises may be sold;

(d) the terms of credit to be allowed and the security to be required; and

(e) how much of the proceeds will be invested, as required by this rule, for the benefit of unknown owners, infants, parties outside Michigan, and parties who have dower interests or life estates.

(B) Specific Procedures and Requirements of Sale.

(1) The person appointed by the court to conduct the sale shall give notice of the sale, including the terms. Notice must be given in the same manner as required by MCL 600.6052.

(2) Neither the person conducting the sale nor anyone acting in his or her behalf may directly or indirectly purchase or be interested in the purchase of the premises sold. The conservator of a minor or legally incapacitated individual may not purchase or be interested in the purchase of lands that are the subject of the proceedings, except for the benefit of the ward. Sales made contrary to this provision are voidable, except as provided by MCL 700.5421.

(3) The part of the price for which credit is allowed must be secured at interest by a mortgage of the premises sold, a note of the purchaser, and other security the court prescribes.

(a) The person conducting the sale may take separate mortgages and other securities in the name of the clerk of the court and the clerk's successors for the shares of the purchase money the court directs to be invested, and in the name of a known owner, 18 years of age or older, who desires to have his or her share so invested.

(b) When the sale is confirmed, the person conducting the sale must deliver the mortgages and other securities to the clerk of the court, or to the known owners whose shares are invested.

(4) After completing the sale, the person conducting the sale shall file a report with the court, stating

(a) the name of each purchaser,

(b) a description of the parcels of land sold to each purchaser, and

(c) the price paid for each parcel.

A copy of the report must be sent to each party who has appeared in the action.

(5) If the court confirms the sale, it shall enter an order authorizing and directing the person conducting the sale to execute conveyances pursuant to the sale.

(6) Conveyances executed according to these rules shall be recorded in the county where the land is located. These conveyances are a bar against

(a) all interested persons who were made parties to the proceedings;

(b) all unknown parties who were ordered to appear and answer by proper publication or personal service of notice;

(c) all persons claiming through parties listed in subrules (B)(6)(a) and (b);

(d) all persons who have specific liens on an undivided share or interest in the premises, if they were made parties to the proceedings.

(7) If the court confirms the sale, and the successful bidder fails to purchase under the terms of the sale, the court may order that the premises be resold at that bidder's risk. That bidder is liable to pay the amount of his or her bid minus the amount received on resale.

(C) Costs and Expenses of the Proceeding. The person conducting the sale shall deduct the costs and expenses of the proceeding, including the plaintiff's reasonable attorney fees as determined by the court, from the proceeds of the sale and pay them to the plaintiff or the plaintiff's attorney.

(D) Distribution of Proceeds of Sale.

(1) When premises that include a dower interest or life estate are sold, the owner of the dower interest or life estate shall be compensated as provided in this subrule.

(a) Unless the owner consents to the alternative compensation provided in subrule (D)(1)(b), the court shall order that the following amount be invested in interest-bearing accounts insured by an agency of the United States government, with the interest paid annually for life to the owner of the dower interest or life estate:

(i) in the case of a dower interest, one-third of the proceeds of the sale of the premises or of the undivided share of the premises on which the claim of dower existed, after deduction of the owner's share of the expenses of the proceeding;

(ii) in the case of a life estate, the entire proceeds of the sale of the premises, or undivided share of the premises in which the life estate existed, after deduction of the proportion of the owner's share of the expenses of the proceeding.

If the owner of the dower interest or life estate is unknown, the court shall order the protection of the person's rights in the same manner, as far as possible, as if he or she were known and had appeared.

(b) If, before the person conducting the sale files the report of sale, the owner of the dower interest or life estate consents, the court shall direct that the owner be paid an amount that, on the principles of law applicable to annuities, is reasonable compensation for the interest or estate. To be effective the consent must be by a written instrument witnessed and acknowledged in the manner required to make a deed eligible for recording.

(2) If there are encumbrances on the estate or interest in the premises of a party to the proceeding, the person conducting the sale must pay to the clerk the portion of the proceeds attributable to the sale of that estate or interest, after deducting the share of the costs, charges, and expenses for which it is liable. The party who owned that estate or interest may apply to the court for payment of his or her claim out of these proceeds. The application must be accompanied by

(a) an affidavit stating the amount due on each encumbrance and the name and address of the owner of each encumbrance, as far as known; and

(b) proof by affidavit that notice was served on each owner of an encumbrance, in the manner prescribed in MCR 2.107.

The court shall hear the proofs, determine the rights of the parties, and direct who must pay the costs of the trial.

After ascertaining the amount of existing encumbrances, the court shall order the distribution of the money held by the clerk among the creditors having encumbrances, according to their priority. When paying an encumbrance the clerk must procure satisfaction of the encumbrance, acknowledged in the form required by law, and must record the satisfaction of the encumbrance. The clerk may pay the expenses of these services out of the portion of the money in court that belongs to the party by whom the encumbrance was payable.

The proceedings under this subrule to ascertain and settle the amounts of encumbrances do not affect other parties to the proceedings for partition and do not delay the payment to a party whose estate in the premises is not subject to an encumbrance or the investing of the money for the benefit of such a person.

(3) The proceeds of a sale, after deducting the costs, must be divided among the parties whose rights and interests have been sold, in proportion to their respective rights in the premises.

(a) The shares of the parties who are 18 years of age or older must be paid to them or to their legal representatives (or brought into court for their use) by the person conducting the sale.

(b) The court may direct that the share of a minor or a legally incapacitated individual be paid to his or her conservator or be invested in interest-bearing accounts insured by an agency of the United States government in the name and for the benefit of the minor or legally incapacitated individual.

(c) If a party whose interest has been sold is absent from the state and has no legal representative in the state or is not known or named in the proceedings, the court shall direct that his or her share be invested in interest-bearing accounts insured by the United States government for the party's benefit until claimed.

(4) The court may require that before receiving a share of the proceeds of a sale a party give a note to secure refund of the share, with interest, if the party is later found not entitled to it.

(5) When the court directs that security be given or investments be made, or the person conducting the sale takes security on the sale of real estate, the bonds, notes, and investments must be taken in the name of the clerk of the court and the clerk's successors in office, unless provision is made to take them in the name of a known owner.

The clerk must hold them and deliver them to his or her successor, and must receive the interest and principal as they become due and apply or reinvest them, as the court directs. The clerk shall annually give to the court a written, sworn account of the money received and the disposition of it.

A security, bond, note, mortgage, or other evidence of the investment may not be discharged, transferred, or impaired by an act of the clerk without the order of the court. A person interested in an investment, with the leave of the court, may prosecute it in the name of the existing clerk, and an action is not abated

by the death, removal from office, or resignation of the clerk to whom the instruments were executed or the clerk's successors.

Rule 3.410 Foreclosure of Mortgages and Land Contracts

(A) Rules Applicable. Except as prescribed in this rule, the general rules of procedure apply to actions to foreclose mortgages and land contracts.

(B) Pleading.

(1) A plaintiff seeking foreclosure or satisfaction of a mortgage on real estate or a land contract must state in the complaint whether an action has ever been brought to recover all or part of the debt secured by the mortgage or land contract and whether part of the debt has been collected or paid.

(2) In a complaint for foreclosure or satisfaction of a mortgage or a land contract, it is not necessary to set out in detail the rights and interests of the defendants who are purchasers of, or who have liens on, the premises, subsequent to the recording of the mortgage or land contract. It is sufficient for the plaintiff, after setting out his or her own interest in the premises, to state generally that the defendants have or claim some interest in the premises as subsequent purchasers, encumbrancers, or otherwise.

(C) Time for Sale. A sale under a judgment of foreclosure may not be ordered on less than 42 days' notice. Publication may not begin until the time set by the judgment for payment has expired, and

(1) until 6 months after an action to foreclose a mortgage is begun;

(2) until 3 months after an action to foreclose a land contract is begun.

(D) Disposition of Surplus. When there is money remaining from a foreclosure sale after paying the amount due the plaintiff, a party to the action may move for the disposition of the surplus in accordance with the rights of the parties entitled to it.

(E) Administration of Mortgage Trusts in Equity.

(1) Proceedings of the kind described in MCL 600.3170 are governed by the procedures prescribed by MCL 451.401-451.405, except as modified by this subrule.

(2) A bond, other obligation, or beneficial interest held by or for the benefit of the mortgagor or the mortgagor's successor in estate, or subject to an agreement or option by which the mortgagor or the mortgagor's successor in estate may acquire it or an interest in it, may not be considered in determining a majority of such obligations or beneficial interests, either as part of the majority or as part of the whole number of which the majority is required.

Rule 3.411 Civil Action to Determine Interests in Land

(A) This rule applies to actions to determine interests in land under MCL 600.2932. It does not apply to summary proceedings to recover possession of premises under MCL 600.5701-600.5759.

(B) Complaint.

(1) The complaint must describe the land in question with reasonable certainty by stating

(a) the section, township, and range of the premises;

(b) the number of the block and lot of the premises; or

(c) another description of the premises sufficiently clear so that the premises may be identified.

(2) The complaint must allege

(a) the interest the plaintiff claims in the premises;

(b) the interest the defendant claims in the premises; and

(c) the facts establishing the superiority of the plaintiff's claim.

(C) Written Evidence of Title to be Referred to in Pleadings.

(1) Written evidence of title may not be introduced at trial unless it has been sufficiently referred to in the pleadings in accordance with this rule.

(2) The plaintiff must attach to the complaint, and the defendant must attach to the answer, a statement of the title on which the pleader relies, showing from whom the title was obtained and the page and book where it appears of record.

(3) Within a reasonable time after demand for it, a party must furnish to the adverse party a copy of an unrecorded conveyance on which he or she relies or give a satisfactory reason for not doing so.

(4) References to title may be amended or made more specific in accordance with the general rules regarding amendments and motions for more definite statement.

(D) Findings As to Rights in and Title to Premises.

(1) After evidence has been taken, the court shall make findings determining the disputed rights in and title to the premises.

(2) If a party not in possession of the premises is found to have had a right to possession at the time the action was commenced, but that right expired before the trial, that party must prove the damages sustained because the premises were wrongfully withheld, and the court shall enter judgment in the amount proved.

(E) Claim for Reasonable Value of Use of Premises.

(1) Within 28 days after the finding of title, the party found to have title to the premises may file a claim against the party who withheld possession of the premises for the reasonable value of the use of the premises during the period the premises were withheld, beginning 6 years before the action was commenced.

(2) The court shall hear evidence and make findings, determining the value of the use of the premises.

(a) The findings must be based on the value of the use of the premises in their condition at the time the withholding party, or those through whom that party claims, first went into possession. The use of the buildings or improvements put on the land by the party who withheld possession may not be considered.

(b) The findings must be based on the general value of the use of the premises, not on a peculiar value the use of the premises had to the party who withheld possession or might have had to the party who had title.

(F) Claim for Value of Buildings Erected and Improvements Made on Premises.

(1) Within 28 days after the finding of title, a party may file a claim against the party found to have title to the premises for the amount that the present value of the premises has been increased by the erection of buildings or the making of improvements by the party making the claim or those through whom he or she claims.

(2) The court shall hear evidence as to the value of the buildings erected and the improvements made on the premises, and the value the premises would have if they had not been improved or built upon. The court shall determine the amount the premises would be worth at the time of the claim had the premises not been improved, and the amount the value of the premises was increased at the time of the claim by the buildings erected and improvements made.

(3) The party claiming the value of the improvements may not recover their value if they were made in bad faith.

(G) Election by Party in Title.

(1) The person found to have title to the premises may elect to abandon them to the party claiming the value of the improvements and to take a judgment against that party for the value the premises would have had at the time of the trial if they had not been improved. The election must be filed with the court within 28 days after the findings on the claim for improvements. The judgment for the value of the premises is a lien against the premises.

(2) If the person found to have title does not elect to abandon the premises under subrule (G)(1), the judgment will provide that he or she recover the premises and pay the value of the improvements to the clerk of the court within the time set in the judgment.

(a) The person found to have title must pay the amount, plus accrued interest, before taking possession of the premises under the judgment, if that person is not already in possession.

(b) If the person found to have title fails to pay the amount of the judgment and the accrued interest within the time set in the judgment, he or she is deemed to have abandoned all claim of title to the premises to the parties in whose favor the judgment for the value of the improvements runs.

(H) Judgment Binding Only on Parties to Action. Except for title acquired by adverse possession, the judgment determining a claim to title, equitable title, right to possession, or other interests in lands under this rule, determines only the rights

and interests of the known and unknown persons who are parties to the action, and of persons claiming through those parties by title accruing after the commencement of the action.

(I) Possession Under Judgment Not to be Affected by Vacation of Judgment Alone. When the judgment in an action under these rules determines that a party is entitled to possession of the premises in dispute, that party's right to possession is not affected by vacation of the judgment and the granting of a new trial, until a contrary judgment is rendered as a result of the new trial.

Rule 3.412 Construction Liens

In an action to enforce a lien under MCL 570.1101 *et seq.*, or other similar law, if the plaintiff has joined others holding liens or others have filed notice of intention to claim liens against the same property, it is not necessary for the plaintiff to answer the counterclaim or cross-claim of another lien claimant, nor for the other lien claimants to answer the plaintiff's complaint or the cross-claim of another lien claimant, unless one of them disputes the validity or amount of the lien sought to be enforced. If no issue has been raised between lien claimants as to the validity or amount of a lien, the action is ready for hearing when at issue between the lien claimants and the owners, part owners, or lessees of the property.

Subchapter 3.500 Representative Actions

Rule 3.501 Class Actions

(A) Nature of Class Action.

(1) One or more members of a class may sue or be sued as representative parties on behalf of all members in a class action only if:

(a) the class is so numerous that joinder of all members is impracticable;

(b) there are questions of law or fact common to the members of the class that predominate over questions affecting only individual members;

(c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;

(d) the representative parties will fairly and adequately assert and protect the interests of the class; and

(e) the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

(2) In determining whether the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice, the court shall consider among other matters the following factors:

(a) whether the prosecution of separate actions by or against individual members of the class would create a risk of

(i) inconsistent or varying adjudications with respect to individual members of the class that would confront the party opposing the class with incompatible standards of conduct; or

(ii) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(b) whether final equitable or declaratory relief might be appropriate with respect to the class;

(c) whether the action will be manageable as a class action;

(d) whether in view of the complexity of the issues or the expense of litigation the separate claims of individual class members are insufficient in amount to support separate actions;

(e) whether it is probable that the amount which may be recovered by individual class members will be large enough in relation to the expense and effort of administering the action to justify a class action; and

(f) whether members of the class have a significant interest in controlling the prosecution or defense of separate actions.

(3) Class members shall have the right to be excluded from the action in the manner provided in this rule, subject to the authority of the court to order them made parties to the action pursuant to other applicable court rules.

(4) Class members have the right to intervene in the action, subject to the authority of the court to regulate the orderly course of the action.

(5) An action for a penalty or minimum amount of recovery without regard to actual damages imposed or authorized by statute may not be maintained as a class action unless the statute specifically authorizes its recovery in a class action.

(B) Procedure for Certification of Class Action.

(1) Motion.

(a) Within 91 days after the filing of a complaint that includes class action allegations, the plaintiff must move for certification that the action may be maintained as a class action.

(b) The time for filing the motion may be extended by order on stipulation of the parties or on motion for cause shown.

(2) Effect of Failure to File Motion. If the plaintiff fails to file a certification motion within the time allowed by subrule (B)(1), the defendant may file a notice of the failure. On the filing of such a notice, the class action allegations are deemed stricken, and the action continues by or against the named parties alone. The class action allegations may be reinstated only if the plaintiff shows that the failure was due to excusable neglect.

(3) Action by Court.

(a) Except on motion for good cause, the court shall not proceed with consideration of the motion to certify until service of the summons and complaint on all named defendants or until the expiration of any unserved summons under MCR 2.102(D).

(b) The court may allow the action to be maintained as a class action, may deny the motion, or may order that a ruling be postponed pending discovery or other preliminary procedures.

(c) In an order certifying a class action, the court shall set forth a description of the class.

(d) When appropriate the court may order that

(i) the action be maintained as a class action limited to particular issues or forms of relief, or

(ii) a proposed class be divided into separate classes with each treated as a class for purposes of certifying, denying certification, or revoking a certification.

(e) If certification is denied or revoked, the action shall continue by or against the named parties alone.

(C) Notice to Class Members.

(1) Notice Requirement. Notice shall be given as provided in this subrule to persons who are included in a class action by certification or amendment of a prior certification, and to persons who were included in a class action by a prior certification but who are to be excluded from the class by amendment or revocation of the certification.

(2) Proposals Regarding Notice. The plaintiff shall include in the motion for certification a proposal regarding notice covering the matters that must be determined by the court under subrule (C)(3). In lieu of such a proposal, the plaintiff may state reasons why a determination of these matters cannot then be made and offer a proposal as to when such a determination should be made. Such a proposal must also be included in a motion to revoke or amend certification.

(3) Action by Court. As soon as practicable, the court shall determine how, when, by whom, and to whom the notice shall be given; the content of the notice; and to whom the response to the notice is to be sent. The court may postpone the notice determination until after the parties have had an opportunity for discovery, which the court may limit to matters relevant to the notice determination.

(4) Manner of Giving Notice.

(a) Reasonable notice of the action shall be given to the class in such manner as the court directs.

(b) The court may require individual written notice to all members who can be identified with reasonable effort. In lieu of or in addition to individual notice, the court may require notice to be given through another method reasonably calculated to reach the members of the class. Such methods may include using publication in a newspaper or magazine; broadcasting on television or radio; posting; or distribution through a trade or professional association, union, or public interest group.

(c) In determining the manner of notice, the court shall consider, among other factors,

(i) the extent and nature of the class,

(ii) the relief requested,

(iii) the cost of notifying the members,

(iv) the resources of the plaintiff, and

(v) the possible prejudice to be suffered by members of the class or by others if notice is not received.

(5) Content of Notice. The notice shall include:

(a) a general description of the action, including the relief sought, and the names and addresses of the representative parties;

(b) a statement of the right of a member of the class to be excluded from the action by submitting an election to be excluded, including the manner and time for exercising the election;

(c) a description of possible financial consequences for the class;

(d) a general description of any counterclaim or notice of intent to assert a counterclaim by or against members of the class, including the relief sought;

(e) a statement that the judgment, whether favorable or not, will bind all members of the class who are not excluded from the action;

(f) a statement that any member of the class may intervene in the action;

(g) the address of counsel to whom inquiries may be directed; and

(h) other information the court deems appropriate.

(6) Cost of Notice.

(a) The plaintiff shall bear the expense of the notification required by subrule (C)(1). The court may require the defendant to cooperate in the notice process, but any additional costs incurred by the defendant in doing so shall be paid by the plaintiff.

(b) Upon termination of the action, the court may allow as taxable costs the expenses of notification incurred by the prevailing party.

(c) Subrules (C)(6)(a) and (b) shall not apply when a statute provides for a different allocation of the cost of notice in a particular class of actions.

(7) Additional Notices. In addition to the notice required by subrule (C)(1), during the course of the action the court may require that notice of any other matter be given in such manner as the court directs to some or all of the members of the class.

(D) Judgment.

(1) The judgment shall describe the parties bound.

(2) A judgment entered before certification of a class binds only the named parties.

(3) A motion for judgment (including partial judgment) under MCR 2.116 may be filed and decided before the decision on the question of class certification. A judgment entered before certification in favor of a named party does not preclude that party from representing the class in the action if that is otherwise appropriate.

(4) A complaint that does not include class action allegations may not be amended to include such allegations after the granting of judgment or partial judgment under MCR 2.116.

(5) A judgment entered in an action certified as a class action binds all members of the class who have not submitted an election to be excluded, except as otherwise directed by the court.

(E) Dismissal or Compromise. An action certified as a class action may not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to the class in such manner as the court directs.

(F) Statute of Limitations.

(1) The statute of limitations is tolled as to all persons within the class described in the complaint on the commencement of an action asserting a class action.

(2) The statute of limitations resumes running against class members other than representative parties and intervenors:

(a) on the filing of a notice of the plaintiff's failure to move for class certification under subrule (B)(2);

(b) 28 days after notice has been made under subrule (C)(1) of the entry, amendment, or revocation of an order of certification eliminating the person from the class;

(c) on entry of an order denying certification of the action as a class action;

(d) on submission of an election to be excluded;

(e) on final disposition of the action.

(3) If the circumstance that brought about the resumption of the running of the statute is superseded by a further order of the trial court, by reversal on appeal, or otherwise, the statute of limitations shall be deemed to have been tolled continuously from the commencement of the action.

(G) Discovery. Representative parties and intervenors are subject to discovery in the same manner as parties in other civil actions. Other class members are subject to discovery in the same manner as persons who are not parties, and may be required to submit to discovery procedures applicable to parties to the extent ordered by the court.

(H) Counterclaims.

(1) Right to File Counterclaims. A party to a class action may file counterclaims as in any other action, including counterclaims by or against a class or an individual class member.

(2) Notice of Intent to File Counterclaims. The defendant may file notice of intent to assert counterclaims against absent class members before notice of certification is given under subrule (C)(1), identifying or describing the persons against whom counterclaims may be filed and describing the nature of the counterclaims.

(3) Time to File. A counterclaim against a class member other than a representative party must be filed and served within 56 days after the class

member intervenes or submits a claim for distribution of a share of any award recovered in the action, whichever is earlier, or within such further time as the court allows.

(4) Notice to Class Members. If the notice of certification given under subrule (C)(1) did not notify potential class members of the counterclaim, each class member against whom a counterclaim is asserted shall be permitted to elect to be excluded from the action. Notice of this right shall be served with the counterclaim.

(5) Control of Action. The court shall take such steps as are necessary to prevent the pendency of counterclaims from making the action unmanageable as a class action. Such steps include but are not limited to severing counterclaims for separate trial under MCR 2.505(B) or ordering that consideration of the counterclaims be deferred until after determination of the issue of the defendant's liability, at which time the court may hear the counterclaims, remove them to a lower court, change venue, dismiss them without prejudice, or take other appropriate action.

(I) Defendant Classes.

(1) An action that seeks to recover money from individual members of a defendant class may not be maintained as a class action.

(2) A representative of a defendant class, other than a public body or a public officer, may decline to defend the action in a representative capacity unless the court finds that the convenient administration of justice otherwise requires.

Rule 3.502 Secondary Action by Shareholders

(A) Pleading. In an action brought by one or more shareholders in an incorporated or unincorporated association because the association has refused or failed to enforce rights which may properly be asserted by it, the complaint shall set forth under oath and with particularity the efforts of the plaintiff to secure from the managing directors or trustees the action the plaintiff desires and the reasons for the failure to obtain such action, or the reasons for not making such an effort.

(B) Security. At any stage of an action under this subrule the court may require such security and impose such terms as shall fairly and adequately protect the interests of the class or association in whose behalf the action is brought or defended.

(C) Notice. The court may order that notice be given, in the manner and to the persons it directs,

(1) of the right of absent persons to appear and present claims and defenses;

(2) of the pendency of the action;

(3) of a proposed settlement;

(4) of entry of judgment; or

(5) of any other proceedings in the action.

(D) Inadequate Representation. Whenever the representation appears to the court inadequate to protect the interests of absent persons who may be bound by the judgment, the court may at any time prior to judgment order an amendment of the pleadings to eliminate references to representation of absent persons, and the court shall enter judgment in such form as to affect only the parties to the action and those adequately represented.

Rule 3.503 Action by Fiduciary

(A) Court Order. When a proceeding is instituted by a fiduciary seeking instruction or authorization with respect to fiduciary duties or the trust property, and it appears that it is impracticable to bring all of the beneficiaries before the court, the court shall enter an order:

(1) setting forth the form of and manner for giving notice of the proceedings to the beneficiaries, and

(2) selecting representatives of the beneficiaries to act as representatives of the class.

(B) Notice. The contents of the notice shall fairly state the purpose of the proceedings and shall specify the time and place of hearing. Where an applicable statute provides for notice, the court may dispense with other notice.

Subchapter 3.600 Miscellaneous Proceedings

Rule 3.601 Public Nuisances

(A) Procedure to Abate Public Nuisance. Actions to abate public nuisances are governed by the general rules of procedure and evidence applicable to nonjury actions, except as provided by the statutes covering public nuisances and by this rule.

(B) Default; Hearing; Notice and Time. If a defendant fails to answer within the time provided, his or her default may be taken. On answer of a defendant or entry of a defendant's default, a party other than a defendant in default may notice the action for hearing on 7 days' notice. Hearings in actions under this rule take precedence over actions that are not entitled to priority by statute or rule and may be held at the time they are noticed without further pretrial proceedings.

(C) Motions; Hearing. Motions by the defendant filed and served with the answer are heard on the day of the hearing of the action.

(D) Entry of Order or Judgment; Preliminary Injunction.

(1) On the day noticed for hearing, the court shall hear and determine the disputed issues and enter a proper order and judgment.

(2) If the hearing is adjourned at the defendant's request, and the court is satisfied by affidavit or otherwise that the allegations in the complaint are true and that the plaintiff is entitled to relief, an injunction as requested may be granted, to be binding until further order.

(3) If service is not obtained on all of the defendants named in the complaint, the court has jurisdiction to hear the action and enter a proper order of abatement and judgment against those defendants who have been served. The order and judgment may not adversely affect the interests of the defendants who have not been served.

(E) Temporary Restraining Order. If a preliminary injunction is requested in the complaint and the court is satisfied by affidavit or otherwise that the material allegations are true, and that the plaintiff is entitled to relief, it may issue a temporary restraining order in accordance with MCR 3.310(B), restraining the defendant from conducting, maintaining, and permitting the continuance of the nuisance and from removing or permitting the removal of the liquor, furniture, fixtures, vehicles, or other things used in the maintenance of the nuisance, until the final hearing and determination on the complaint or further order.

(F) Substitution for Complaining Party. The court may substitute the Attorney General or prosecuting attorney for the complaining party and direct the substituted officer to prosecute the action to judgment.

(G) Further Orders of Court. The court may enter other orders consistent with equity and not inconsistent with the provisions of the statute and this rule.

Rule 3.602 Arbitration

(A) Applicability of Rule. This rule governs statutory arbitration under MCL 600.5001-600.5035.

(B) Proceedings to Compel or to Stay Arbitration.

(1) A request for an order to compel or to stay arbitration or for another order under this rule must be by motion, which shall be heard in the manner and on the notice provided by these rules for motions. If there is not a pending action between the parties, the party seeking the requested relief must first file a complaint as in other civil actions.

(2) On motion of a party showing an agreement to arbitrate that conforms to the arbitration statute, and the opposing party's refusal to arbitrate, the court may order the parties to proceed with arbitration and to take other steps necessary to carry out the arbitration agreement and the arbitration statute. If the opposing party denies the existence of an agreement to arbitrate, the court shall summarily determine the issues and may order arbitration or deny the motion.

(3) On motion, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. If there is a substantial and good-faith dispute, the court shall summarily try the issue and may enter a stay or direct the parties to proceed to arbitration.

(4) A motion to compel arbitration may not be denied on the ground that the claim sought to be arbitrated lacks merit or is not filed in good faith, or because fault or grounds for the claim have not been shown.

(C) Action Involving Issues Subject to Arbitration; Stay. Subject to MCR 3.310(E), an action or proceeding involving an issue subject to arbitration must be stayed if an order for arbitration or motion for such an order has been made under this rule. If the issue subject to arbitration is severable, the stay may be limited to that issue. If a motion for an order compelling arbitration is made in the action or proceeding in which the issue is raised, an order for arbitration must include a stay.

(D) Hearing; Time; Place; Adjournment.

(1) The arbitrator shall set the time and place for the hearing, and may adjourn it as necessary.

(2) On a party's request for good cause, the arbitrator may postpone the hearing to a time not later than the day set for rendering the award.

(E) Oath of Arbitrator and Witnesses.

(1) Before hearing testimony, the arbitrator must be sworn to hear and fairly consider the matters submitted and to make a just award according to his or her best understanding.

(2) The arbitrator has the power to administer oaths to the witnesses.

(F) Subpoena; Depositions.

(1) MCR 2.506 applies to arbitration hearings.

(2) On a party's request, the arbitrator may permit the taking of a deposition, for use as evidence, of a witness who cannot be subpoenaed or is unable to attend the hearing. The arbitrator may designate the manner of and the terms for taking the deposition.

(G) Representation by Attorney. A party has the right to be represented by an attorney at a proceeding or hearing under this rule. A waiver of the right before the proceeding or hearing is ineffective.

(H) Award by Majority; Absence of Arbitrator. If the arbitration is by a panel of arbitrators, the hearing shall be conducted by all of them, but a majority may decide any question and render a final award unless the concurrence of all of the arbitrators is expressly required by the agreement to submit to arbitration. If, during the course of the hearing, an arbitrator ceases to act for any reason, the remaining arbitrator or arbitrators may continue with the hearing and determine the controversy.

(I) Award; Confirmation by Court. An arbitration award filed with the clerk of the court designated in the agreement or statute within one year after the award was rendered may be confirmed by the court, unless it is vacated, corrected, or modified, or a decision is postponed, as provided in this rule.

(J) Vacating Award.

(1) A request for an order to vacate an arbitration award under this rule must be made by motion. If there is not a pending action between the parties, the party seeking the requested relief must first file a complaint as in other civil actions. A complaint to vacate an arbitration award must be filed no later than 21 days after the date of the arbitration award.

(2) On motion of a party, the court shall vacate an award if:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights;

(c) the arbitrator exceeded his or her powers; or

(d) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights.

The fact that the relief could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(3) A motion to vacate an award must be filed within 91 days after the date of the award. However, if the motion is predicated on corruption, fraud, or other undue means, it must be filed within 21 days after the grounds are known or should have been known. A motion to vacate an award in a domestic relations case must be filed within 21 days after the date of the award.

(4) In vacating the award, the court may order a rehearing before a new arbitrator chosen as provided in the agreement, or, if there is no such provision, by the court. If the award is vacated on grounds stated in subrule

(J)(1)(c) or (d), the court may order a rehearing before the arbitrator who made the award. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(5) If the motion to vacate is denied and there is no motion to modify or correct the award pending, the court shall confirm the award.

(K) Modification or Correction of Award.

(1) A request for an order to modify or correct an arbitration award under this rule must be made by motion. If there is not a pending action between the parties, the party seeking the requested relief must first file a complaint as in other civil actions. A complaint to correct or modify an arbitration award must be filed no later than 21 days after the date of the arbitration award.

(2) On motion made within 91 days after the date of the award, the court shall modify or correct the award if:

(a) there is an evident miscalculation of figures or an evident mistake in the description of a person, a thing, or property referred to in the award;

(b) the arbitrator has awarded on a matter not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the issues submitted; or

(c) the award is imperfect in a matter of form, not affecting the merits of the controversy.

(3) If the motion is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(4) A motion to modify or correct an award may be joined in the alternative with a motion to vacate the award.

(L) Judgment. The court shall render judgment giving effect to the award as corrected, confirmed, or modified. The judgment has the same force and effect, and may be enforced in the same manner, as other judgments.

(M) Costs. The costs of the proceedings may be taxed as in civil actions, and, if provision for the fees and expenses of the arbitrator has not been made in the award, the court may allow compensation for the arbitrator's services as it deems just. The arbitrator's compensation is a taxable cost in the action.

(N) Appeals. Appeals may be taken as from orders or judgments in other civil actions.

Rule 3.603 Interpleader

(A) Availability.

(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not a ground for objection to the joinder that the claims of the several claimants or the titles on which their

claims depend do not have a common origin or are not identical, but are adverse to and independent of one another, or that the plaintiff denies liability to any or all of the claimants in whole or in part.

(2) A defendant exposed to liability as described in subrule (A)(1), may obtain interpleader by counterclaim or cross-claim. A claimant not already before the court may be joined as defendant, as provided in MCR 2.207 or MCR 2.209.

(3) If one or more actions concerning the subject matter of the interpleader action have already been filed, the interpleader action must be filed in the court where the first action was filed.

(B) Procedure.

(1) The court may order the property or the amount of money as to which the plaintiff admits liability to be deposited with the court or otherwise preserved, or to be secured by a bond in an amount sufficient to assure payment of the liability admitted.

(2) The court may thereafter enjoin the parties before it from commencing or prosecuting another action regarding the subject matter of the interpleader action.

(3) On hearing, the court may order the plaintiff discharged from liability as to property deposited or secured before determining the rights of the claimants.

(C) Rule Not Exclusive. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted by MCR 2.206.

(D) Disposition of Earlier Action. If another action concerning the subject matter of the interpleader action has previously been filed, the court in which the earlier action was filed may:

(1) transfer the action, entirely or in part, to the court in which the interpleader action is pending,

(2) hold the action entirely or partially in abeyance, pending resolution of the interpleader action,

(3) dismiss the action, entirely or in part, or

(4) upon a showing of good cause, proceed with the action, explaining on the record the basis of the decision to proceed.

(E) Actual Costs. The court may award actual costs to an interpleader plaintiff. For the purposes of this rule, actual costs are those costs taxable in any civil action, and a reasonable attorney fee as determined by the trial court.

(1) The court may order that the plaintiff's actual costs of filing the interpleader request, tendering the disputed property to the court, and participating in the case as a disinterested stakeholder be paid from the disputed property or by another party.

(2) If the plaintiff incurs actual costs other than those described in subrule (1) due to another party's unreasonable litigation posture, the court may order that the other party pay those additional actual costs.

(3) An award made pursuant to this rule may not include reimbursement for the actual costs of asserting the plaintiff's own claim to the disputed property, or of supporting or opposing another party's claim.

Rule 3.604 Bonds

(A) Scope of Rule. This rule applies to bonds given under the Michigan Court Rules and the Revised Judicature Act, unless a rule or statute clearly indicates that a different procedure is to be followed.

(B) Submission to Jurisdiction of Court by Surety. A surety on a bond or undertaking given under the Michigan Court Rules or the Revised Judicature Act submits to the jurisdiction of the court and consents that further proceedings affecting the surety's liability on the bond or undertaking may be conducted under this rule.

(C) Death of Party; Substitution of Surety. If the only plaintiff or the only defendant dies during the pendency of an action, in addition to the parties substituted under MCR 2.202, each surety on a bond given by the deceased party shall be made a party to the action, on notice to the surety in the manner prescribed in MCR 2.107.

(D) Affidavit of Surety; Notice of Bond.

(1) A surety on a bond, except for a surety company authorized to do business in Michigan, must execute an affidavit that he or she has pecuniary responsibility and attach the affidavit to the bond.

(2) In alleging pecuniary responsibility, a surety must affirm that he or she owns assets not exempt from execution having a fair market value exceeding his or her liabilities by at least twice the amount of the bond.

(3) A copy of a bond and the accompanying affidavit must be promptly served on the party for whose benefit it is given in the manner prescribed in MCR 2.107. Proof of service must be filed promptly with the court in which the bond has been filed.

(4) In an action alleging medical malpractice filed on or after October 1, 1986, notice of the filing of security for costs or the affidavit in lieu of such security, required by MCL 600.2912d, 600.2912e, shall be given as provided in MCR 2.109(B).

(E) Objections to Surety. A party for whose benefit a bond is given may, within 7 days after receipt of a copy of the bond, serve on the officer taking the bond and the party giving the bond a notice that the party objects to the sufficiency of the surety. Failure to do so waives all objections to the surety.

(F) Hearing on Objections to Surety. Notice of objection to a surety must be filed as a motion for hearing on objections to the bond.

(1) On demand of the objecting party, the surety must appear at the hearing of the motion and be subject to examination as to the surety's pecuniary responsibility or the validity of the execution of the bond.

(2) After the hearing, the court may approve or reject the bond as filed or require an amended, substitute, or additional bond, as the circumstances warrant.

(3) In an appeal to the circuit court from a lower court or tribunal, an objection to the surety is heard in the circuit court.

(G) Surety Company Bond. A surety company certified by the Commissioner of Insurance as authorized to do business in Michigan may act as surety on a bond.

(H) Assignment or Delivery of Bond. If the condition of a bond is broken, or the circumstances require, the court shall direct the delivery or assignment of the bond for prosecution to the person for whose benefit it was given. Proceedings to enforce the bond may be taken in the action pursuant to subrule (I).

(I) Judgment Against Surety.

(1) Judgment on Motion. In an action in which a bond or other security has been posted, judgment may be entered directly against the surety or the security on motion without the necessity of an independent action on a showing that the condition has occurred giving rise to the liability on the bond or to the forfeiture of the security.

(2) Notice. Notice of the hearing on the motion for judgment must be given to the surety or the owner of the security in the manner prescribed in MCR 2.107. The notice may be mailed to the address stated in the bond or stated when the security was furnished unless the surety or owner has given notice of a change of address.

(3) Restitution. If in later proceedings in the action, on appeal or otherwise, it is determined that the surety is not liable or that the security should not have been forfeited, the court may order restitution of money paid or security forfeited.

(J) Application to Another Judge After Supersedeas Refused.

(1) If a circuit judge has denied an application for supersedeas in whole or in part, or has granted it conditionally or on terms, a later application for the same purpose and in the same matter may not be made to another circuit judge if the first judge is available.

(2) If an order is entered contrary to the provisions of subrule (J)(1), it is void and must be revoked by the judge who entered it, on proof of the facts. A person making a later application contrary to this rule is subject to punishment for contempt.

(K) Cash or Securities Bond. The furnishing of a cash or securities bond under MCL 600.2631 is deemed compliance with these rules.

(L) Stay of Proceedings Without Bond. If a party required to give a bond under these rules for supersedeas, appeal, or otherwise is unable to give the bond by reason of poverty, the court may, on proof of the inability, limit or eliminate the requirement for surety on the bond on appropriate conditions and for a reasonable time.

Rule 3.605 Collection of Penalties, Fines, Forfeitures, and Forfeited Recognizances

(A) Definition. The term "penalty," as used in this rule, includes fines, forfeitures, and forfeited recognizances, unless otherwise provided in this rule.

(B) Parties. The civil action for a pecuniary penalty incurred for the violation of an ordinance of a city or village must be brought in the name of the city or village. Other actions to recover penalties must be brought in the name of the people of the State of Michigan.

(C) Judgment on Penalty. In an action against a party liable for a penalty, judgment may be rendered directly against the party and in favor of the other party on motion and showing that the condition has occurred giving rise to the penalty. This subrule does not apply to forfeited civil recognizances under MCR 3.604 or to forfeited criminal recognizances under MCL 765.28.

(D) Remission of Penalty. An application for the remission of a penalty, including a bond forfeiture, may be made to the judge who imposed the penalty or ordered the forfeiture. The application may not be heard until reasonable notice has been given to the prosecuting attorney (or municipal attorney) and he or she has had an opportunity to examine the matter and prepare to resist the application. The application may not be granted without payment of the costs and expenses incurred in the proceedings for the collection of the penalty.

(E) Duty of Clerk When Fine Without Order for Commitment; Duty of Prosecutor. When a fine is imposed by a court on a person, without an order for the immediate commitment of the person until the fine is paid, the clerk of the court shall deliver a copy of the order imposing the fine to the prosecuting attorney of the county in which the court is held, or the municipal attorney in the case of a fine that is payable to a municipality. The prosecuting attorney (or municipal attorney) shall obtain execution to collect the fine.

Rule 3.606 Contempts Outside Immediate Presence of Court

(A) Initiation of Proceeding. For a contempt committed outside the immediate view and presence of the court, on a proper showing on ex parte motion supported by affidavits, the court shall either

(1) order the accused person to show cause, at a reasonable time specified in the order, why that person should not be punished for the alleged misconduct; or

(2) issue a bench warrant for the arrest of the person.

(B) Writ of Habeas Corpus. A writ of habeas corpus to bring up a prisoner to testify may be used to bring before the court a person charged with misconduct under this rule. The court may enter an appropriate order for the disposition of the person.

(C) Bond for Appearance.

(1) The court may allow the giving of a bond in lieu of arrest, prescribing in the bench warrant the penalty of the bond and the return day for the defendant.

(2) The defendant is discharged from arrest on executing and delivering to the arresting officer a bond

(a) in the penalty endorsed on the bench warrant to the officer and the officer's successors,

(b) with two sufficient sureties, and

(c) with a condition that the defendant appear on the return day and await the order and judgment of the court.

(3) Return of Bond. On returning a bench warrant, the officer executing it must return the bond of the defendant, if one was taken. The bond must be filed with the bench warrant.

(D) Assignment of Bond; Damages. The court may order assignment of the bond to an aggrieved party who is authorized by the court to prosecute the bond under MCR 3.604(H). The measure of the damages to be assessed in an action on the bond is the extent of the loss or injury sustained by the aggrieved party because of the misconduct for which the order for arrest was issued, and that party's costs and expenses in securing the order. The remainder of the penalty of the bond is paid into the treasury of the county in which the bond was taken, to the credit of the general fund.

(E) Prosecution on Bond by Attorney General or Prosecutor. If the court does not order an assignment as provided in (D), it shall order the breach prosecuted by the Attorney General or by the prosecuting attorney for the county in which the bond was taken, under MCR 3.604. The penalty recovered is to be paid into the treasury of the county in which the bond was taken, to the credit of the general fund.

Rule 3.607 Proceedings to Restore Lost Records or Papers in Courts of Record

(A) Application for Order. When a record or paper relating to an action or proceeding pending or determined in a Michigan court of record is lost, a person having an interest in its recovery may apply to the court having jurisdiction of the action or the record for an order that a duplicate of the lost record or paper be prepared and filed in the court.

(B) Manner of Proceeding; Notice to Interested Parties. The party making the application must show to the satisfaction of the court that the record or paper once existed and has been lost, without the fault or connivance, directly or indirectly, of the applicant. On that showing, the court shall direct the manner of proceeding to replace the lost item, and the notice to be given to parties interested in the application.

(C) Witnesses; Interrogatories. The court before which the application is pending may issue subpoenas for and compel the attendance of witnesses, or may compel witnesses to submit to examination on interrogatories and to establish facts relevant to the proceeding.

(D) Order; Effect of Duplicate. If the court is satisfied that the record or paper proposed as a substitute for the lost one exhibits all the material facts of the original, the court shall enter an order providing that the substitute record or paper

be filed or recorded with the officer who had custody of the original. During the continuance of the loss, the substituted record or paper has the same effect in all respects and in all places as the original.

Rule 3.611 Voluntary Dissolution of Corporations

(A) Scope; Rules Applicable. This rule governs actions to dissolve corporations brought under MCL 600.3501. The general rules of procedure apply to these actions, except as provided in this rule and in MCL 600.3501-600.3515.

(B) Contents of Complaint; Statements Attached. A complaint seeking voluntary dissolution of a corporation must state why the plaintiff desires a dissolution of the corporation, and there must be attached:

(1) an inventory of all the corporation's property;

(2) a statement of all encumbrances on the corporation's property;

(3) an account of the corporation's capital stock, specifying the names of the stockholders, their addresses, if known, the number of shares belonging to each, the amount paid in on the shares, and the amount still due on them;

(4) an account of all the corporation's creditors and the contracts entered into by the corporation that may not have been fully satisfied and canceled, specifying:

(a) the address of each creditor and of every known person with whom the contracts were made, if known, and if not known, that fact to be stated;

(b) the amount owing to each creditor;

(c) the nature of each debt, demand, or obligation; and

(d) the basis of and consideration for each debt, demand, or obligation; and

(5) the affidavit of the plaintiff that the facts stated in the complaint, accounts, inventories, and statements are complete and true, so far as the plaintiff knows or has the means of knowing.

(C) Notice of Action. Process may be served as in other actions, or, on the filing of the complaint, the court may order all persons interested in the corporation to show cause why the corporation should not be dissolved, at a time and place to be specified in the order, but at least 28 days after the date of the order. Notice of the contents of the order must be served by mail on all creditors and stockholders at least 28 days before the hearing date, and must be published once each week for 3 successive weeks in a newspaper designated by the court.

(D) Hearing. At a hearing ordered under subrule (C), the court shall hear the allegations and proofs of the parties and take testimony relating to the property, debts, credits, engagements, and condition of the corporation. After the hearing, the court may dismiss the action, order the corporation dissolved, appoint a receiver, schedule further proceedings, or enter another appropriate order.

(E) Suits by Receiver. An action may be brought by the receiver in his or her own name and may be continued by the receiver's successor or co-receiver. An action commenced by or against the corporation before the filing of the complaint for

dissolution is not abated by the complaint or by the judgment of dissolution, but may be prosecuted or defended by the receiver. The court in which an action is pending may on motion order substitution of parties or enter another necessary order.

Rule 3.612 Winding Up of Corporation Whose Term or Charter Has Expired

(A) Scope; Rules Applicable. This rule applies to actions under MCL 600.3520. The general rules of procedure apply to these actions, except as provided in this rule and in MCL 600.3520.

(B) Contents of Complaint. The complaint must include:

(1) the nature of the plaintiff's interest in the corporation or its property, the date of organization of the corporation, the title and the date of approval of the special act under which the corporation is organized, if appropriate, and the term of corporate existence;

(2) whether any of the corporation's stockholders are unknown to the plaintiff;

(3) that the complaint is filed on behalf of the plaintiff and all other persons interested in the property of the corporation as stockholders, creditors, or otherwise who may choose to join as parties plaintiff and share the expense of the action;

(4) an incorporation by reference of the statements required by subrule (C);

(5) other appropriate allegations; and

(6) a demand for appropriate relief, which may include that the affairs of the corporation be wound up and its assets disposed of and distributed and that a receiver of its property be appointed.

(C) Statements Attached to Complaint. The complaint must have attached:

(1) a copy of the corporation's articles of incorporation, if they are on file with the Department of Commerce, and, if the corporation is organized by special act, a copy of the act;

(2) a statement of the corporation's assets, so far as known to the plaintiff;

(3) a statement of the amount of capital stock and of the amount paid in, as far as known, from the last report of the corporation on file with the Department of Commerce or, if none has been filed, from the articles of incorporation on file with the Department of Commerce, or the special legislative act organizing the corporation;

(4) if the corporation's stock records are accessible to the plaintiff, a list of the stockholders' names and addresses and the number of shares held by each, insofar as shown in the records;

(5) a statement of all encumbrances on the corporation's property, and all claims against the corporation, and the names and addresses of the encumbrancers and claimants, so far as known to the plaintiff; and

(6) a statement of the corporation's debts, the names and addresses of the creditors, and the nature of the consideration for each debt, so far as known to the plaintiff.

(D) Parties Defendant. The corporation must be made a defendant. All persons claiming encumbrances on the property may be made defendants. It is not necessary to make a stockholder or creditor of the corporation a defendant.

(E) Process and Order for Appearance; Publication.

(1) Process must be issued and served as in other civil actions or, on the filing of the complaint, the court may order the appearance and answer of the corporation, its stockholders, and creditors at least 28 days after the date of the order.

(2) The order for appearance must be published in the manner prescribed in MCR 2.106.

(3) When proof of the publication is filed and the time specified in the order for the appearance of the corporation, stockholders, and creditors has expired, an order may be entered taking the complaint as confessed by those who have not appeared.

(F) Appearance by Defendants.

(1) Within the time the order for appearance sets, the following persons may appear and defend the suit as the corporation might have:

(a) a stockholder in the corporation while it existed and who still retains rights in its property by owning stock;

(b) an assignee, purchaser, heir, devisee, or personal representative of a stockholder; or

(c) a creditor of the corporation, whose claim is not barred by the statute of limitations.

(2) All persons so appearing must defend in the name of the corporation.

(3) If a person other than the corporation has been named as a defendant in the complaint, that person must be served with process as in other civil actions.

(G) Subsequent Proceedings. So far as applicable, the procedures established in MCR 3.611 govern hearings and later proceedings in an action under this rule.

(H) Continuation of Proceeding for Benefit of Stockholder or Creditor. If the plaintiff fails to establish that he or she is a stockholder or creditor of the corporation, the action may be continued by another stockholder or creditor who has appeared in the action.

Rule 3.613 Change of Name

(A) Published Notice, Contents. A published notice of a proceeding to change a name shall include the name of the petitioner; the current name of the subject of the petitioner; the proposed name; and the time, date and place of the hearing.

(B) Minor's Signature. A petition for a change of name by a minor need not be signed in the presence of a judge.

(C) Notice to Noncustodial Parent. Service on a noncustodial parent of a minor who is the subject of a petition for change of name shall be made in the following manner.

(1) Address Known. If the noncustodial parent's address or whereabouts is known, that parent shall be served with a copy of the petition and a notice of hearing.

(2) Address Unknown. If the noncustodial parent's address or whereabouts is not known and cannot be ascertained after diligent inquiry, that parent shall be served with a notice of hearing by publishing in a newspaper and filing a proof of service as provided by MCR 2.106(F) and (G). The notice must be published one time at least 14 days before the date of the hearing, must include the name of the noncustodial parent and a statement that the result of the hearing may be to bar or affect the noncustodial parent's interest in the matter, and that publication must be in the county where the court is located unless a different county is specified by statute, court rule, or order of the court. A notice published under this subrule need not set out the contents of the petition if it contains the information required under subrule (A). A single publication may be used to notify the general public and the noncustodial parent whose address cannot be ascertained if the notice contains the noncustodial parent's name.

(D) Consultation with Minor, Presumption. A child 7 years of age and under is presumed not of sufficient age to be consulted concerning a preference on change of name.

(E) Confidential Records. In cases where the court orders that records are to be confidential and that no publication is to take place, records are to be maintained in a sealed envelope marked confidential and placed in a private file. Except as otherwise ordered by the court, only the original petitioner may gain access to confidential files, and no information relating to a confidential record, including whether the record exists, shall be accessible to the general public.

Rule 3.614 Health Threats to Others

(A) Public Health Code, Application. Except as modified by this rule, proceedings relating to carriers of contagious diseases who pose threats to the health of others under part 52 of the public health code are governed by the rules generally applicable to civil proceedings.

(B) Service of Papers. The moving party is responsible for service when service is required.

(C) Interested Parties. The interested parties in a petition for treatment of infectious disease are the petitioner and the respondent.

(D) Commitment Review Panel.

(1) Appointment. On receipt of a petition for treatment of infectious disease which requests that the individual be committed to an appropriate facility, the

Court shall forthwith appoint a Commitment Review Panel from a list of physicans prepared by the Department of Public health.

(2) Respondent's Choice of Physican. On motion of the respondent requesting that a specific physician be appointed to the Commitment Review Panel, the Court shall appoint the physician so requested, unless the physician refuses. If the individual is unable to pay such physician , the court shall pay such physician a reasonable fee comparable with fees paid to other court appointed experts. On appointment of the requested physician, the Court shall discharge one of the initially appointed physicians.

(3) The Commitment Review Panel shall make written recommendations to the Court prior to the date of hearing on the petition. The recommendations shall be substantially in a form approved by the State Court Administrator.

(E) Commitment to Facility.

(1) Renewal of Order of Commitment. A motion for continuing commitment shall be filed at least 14 days prior to the expiration of the order of commitment. The motion shall be made by the director of the commitment facility or the director's designee. The court shall conduct a hearing on the motion prior to the expiration of the existing order of commitment. Notice shall be given as on the initial petition and to the local department of public health. The court shall reconvene the respondent's Commitment Review Panel. At the hearing, the petitioner must show good cause for continued commitment in the facility. No order of commitment shall exceed 6 months in length.

(2) Reevaluation at Request of Respondent. Once within any six-month period or more often by leave of the court, an individual committed to a facility for treatment of an infectious disease may file in the court a petition for a new Commitment Review Panel recommendation on whether the patient's commitment should be terminated. Within 14 days after receipt of the report of the reconvened Commitment Review Panel, the court shall review the panel's report and enter an order. The court may modify, continue or terminate its order of commitment without a hearing.

Rule 3.615 Parental Rights Restoration Act Proceedings

(A) Applicable Rules. A proceeding by a minor to obtain a waiver of parental consent for an abortion shall be governed by the rules applicable to civil proceedings except as modified by this rule.

(B) Confidentiality, Use of Initials, Private File, Reopening.

(1) The court shall assure the confidentiality of the file, the assistance given the minor by court personnel, and the proceedings.

(2) If requested by the minor, the title of the proceeding shall be by initials or some other means of assuring confidentiality. At the time the petition is filed, the minor shall file a Confidential Information Sheet listing the minor's name, date of birth, permanent residence, title to be used in the proceeding and the method by which the minor may be reached during the pendency of the proceeding. The Confidential Information Sheet and all other documents

containing identifying information shall be sealed in an envelope marked confidential on which the case number has been written and placed in a private file. Confidential information shall not be entered into a computer file.

(3) The court shall maintain only one file of all papers for each case. The file shall be inspected only by the judge, specifically authorized court personnel, the minor, her attorney, her next friend, the guardian ad litem, and any other person authorized by the minor. After the proceedings are completed, the file may be opened only by order of the court for good cause shown and only for a purpose specified in the order of the court.

(4) The file of a completed case shall not be destroyed until two years after the minor has reached the age of majority. The court shall not microfilm or otherwise copy the file.

(C) Advice of Rights, Method of Contact.

(1) If a minor seeking a waiver of parental consent makes first contact with the court by personal visit to the court, the court shall provide a written notice of rights and forms for a petition for waiver of parental consent, a confidential information sheet, and a request for appointment of an attorney, each substantially in the form approved by the state court administrator.

(2) If a minor seeking a waiver of parental consent makes first contact with the court by telephone, the court shall tell the minor that she can receive a notice of rights and forms for a petition, a confidential information sheet, and a request for appointment of an attorney by coming to the court or that the court will mail such forms to the minor. If the minor requests that the court mail the forms, the court shall mail the forms within 24 hours of the telephone contact to an address specified by the minor.

(3) Any person on personal visit to the court shall be given, on request, a copy of the notice of rights or any other form.

(D) Assistance with Preparation of Petition. On request of the minor or next friend, the court shall provide the minor with assistance in preparing and filing of a petition, confidential information sheet and request for appointment of an attorney, each substantially in the form approved by the state court administrator.

(E) Next Friend. If the minor proceeds through a next friend, the petitioner shall certify that the next friend is not disqualified by statute and that the next friend is an adult. The next friend may act on behalf of the minor without prior appointment of the court and is not responsible for the costs of the action.

(F) Attorney, Request, Appointment, Duties.

(1) At the request of the minor or next friend before or after filing the petition, the court shall immediately appoint an attorney to represent the minor. The request shall be in writing in substantially the form approved by the state court administrator. Except for good cause stated on the record, the court shall appoint an attorney selected by the minor if the minor has secured the attorney's agreement to represent her or the attorney has previously indicated to the court a willingness to be appointed.

(2) If it deems necessary, the court may appoint an attorney to represent the minor at any time.

(3) The minor shall contact the court appointed attorney within 24 hours of such appointment. The court shall advise the minor of this requirement.

(4) If an attorney is appointed to represent a minor prior to filing a petition, the attorney shall consult with the minor within 48 hours of appointment.

(G) Guardian Ad Litem, Appointment, Duties.

(1) Request of Minor. The court shall immediately appoint a guardian ad litem to represent the minor at the request of the minor or next friend before or after filing the petition.

(2) Appointment on Court's Motion.

(a) At any time if it deems necessary, the court may appoint a guardian ad litem to assist the court.

(b) The guardian ad litem may obtain information by contacting the minor and other persons with the consent of the minor, provided the confidentiality of the proceedings is not violated.

(H) Filing Petition, Setting Hearing, Notice of Hearing.

(1) The petition shall be filed in person by the minor, attorney or next friend.

(2) The court shall set a time and place for a hearing and notify the filer at the time the petition is filed. The court shall give notice of the hearing only to the minor, the minor's attorney, next friend and guardian ad litem. Notice of hearing may be oral or written and may be given at any time prior to the hearing. The hearing may be scheduled to commence immediately if the minor and her attorney, if any, are ready to proceed.

(3) Insofar as practical, at the minor's request the hearing shall be scheduled at a time and place that will not interfere with the minor's school attendance.

(I) Venue, Transfer. Venue is in the county of the minor's residence or where the minor is found at the time of the filing of the petition. Transfer of venue properly laid shall not be made without consent of the minor.

(J) Hearing.

(1) Burden and Standard of Proof. The petitioner has the burden of proof by preponderance of the evidence and must establish the statutory criteria at a hearing.

(2) Closed Hearing. The hearing shall be closed to the public. The court shall limit attendance at the hearing to the minor, the minor's attorney, the next friend, the guardian ad litem, persons who are called to testify by the minor or with the minor's consent, necessary court personnel and one support person who would not be disqualified as a next friend by MCL 722.902(d).

(3) All relevant and material evidence may be received.

(4) The hearing may be conducted informally in the chambers of a judge.

(5) The hearing shall commence and be concluded within 72 hours, excluding Sundays and holidays, of the filing of the petition, unless the minor consents to an adjournment. The order of the court shall be issued within 48 hours, excluding Sundays and holidays, of the conclusion of the hearing.

(K) Order.

(1) Order Granting Waiver, Duration, Effect. If the petition is granted, the court immediately shall provide the minor with two certified copies of the order granting waiver of parental consent. The order shall be valid for 90 days from the date of entry. Nothing in the order shall require or permit an abortion that is otherwise prohibited by law.

(2) Order Denying Waiver, Notice of Appeal, Appointment of Counsel, Preparation of Transcript. If the order denies relief, the court shall endorse the time and date on the order. The order shall be served on the minor's attorney or, if none, the minor along with

(a) a unified appellate document substantially in the form approved by the state court administrator which may be used as notice of appeal, claim of appeal, request for appointment of an attorney and order of transcript, and

(b) a notice that, if the minor desires to appeal, the minor must file the notice of appeal with the court within 24 hours.

(3) Appeal.

(a) Upon receipt of a timely notice of appeal, the court must appoint counsel and order that the transcript be prepared immediately and two copies filed within 72 hours. If the minor was represented by counsel in the court proceedings, the court must reappoint the same attorney unless there is good cause for a different appointment. As soon as the transcript is filed, the court shall forward the file to the Court of Appeals.

(b) Time for filing notice.

(1) If the order was entered at the conclusion of the hearing or at any other time when the minor's attorney or, if none, the minor was in attendance at court, the minor must file the notice of appeal within 24 hours of the date and time stamped on the order, or

(2) If the order was entered at any other time, the minor must file the notice of appeal within 24 hours of the time when the order was received by the minor's attorney or, if none, the minor.

(c) If a court in which a document is to be filed is closed for business at the end of a filing period, the document will be filed on a timely basis if filed during the morning of the next day when the court is open for business.

(d) Perfection of Appeal. The minor's attorney must perfect the appeal by filing in the Court of Appeals a claim of appeal and a copy of the order denying waiver. The appeal must be perfected within 72 hours, excluding Sundays and holidays, of the filing of the notice of appeal.

(e) Brief. The minor's attorney shall file at the time of perfecting appeal five copies of the brief on appeal. The brief need not contain citations to the transcript.

(f) Oral Argument. There will be no oral argument, unless ordered by the Court of Appeals.

Subchapter 3.700 Personal Protection Proceedings

Rule 3.701 Applicability of Rules; Forms

(A) Scope. Except as provided by this subchapter and the provisions of MCL 600.2950 and 600.2950a, actions for personal protection for relief against domestic violence or stalking are governed by the Michigan Court Rules. Procedure related to personal protection orders against adults is governed by this subchapter. Procedure related to personal protection orders against minors is governed by subchapter 3.900, except as provided in MCR 3.981.

(B) Forms. The state court administrator shall approve forms for use in personal protection act proceedings. The forms shall be made available for public distribution by the clerk of the circuit court.

Rule 3.702 Definitions

When used in this subchapter, unless the context otherwise indicates:

(1) "personal protection order" means a protection order as described under MCL 600.2950 and 600.2950a;

(2) "petition" refers to a pleading for commencing an independent action for personal protection and is not considered a motion as defined in MCR 2.119;

(3) "petitioner" refers to the party seeking protection;

(4) "respondent" refers to the party to be restrained;

(5) "existing action" means an action in this court or any other court in which both the petitioner and the respondent are parties; existing actions include, but are not limited to, pending and completed domestic relations actions, criminal actions, other actions for personal protection orders.

(6) "minor" means a person under the age of 18.

(7) "minor personal protection order" means a personal protection order issued by a court against a minor and under jurisdiction granted by MCL 712A.2(h).

Rule 3.703 Commencing a Personal Protection Action

(A) Filing. A personal protection action is an independent action commenced by filing a petition with a court. There are no fees for filing a personal protection action and no summons is issued. A personal protection action may not be commenced by filing a motion in an existing case or by joining a claim to an action.

(B) Petition in General. The petition must

(1) be in writing;

(2) state with particularity the facts on which it is based;

(3) state the relief sought and the conduct to be restrained;

(4) state whether an ex parte order is being sought;

(5) state whether a personal protection order action involving the same parties has been commenced in another jurisdiction; and

(6) be signed by the party or attorney as provided in MCR 2.114. The petitioner may omit his or her residence address from the documents filed with the court, but must provide the court with a mailing address.

(C) Petition Against a Minor. In addition to the requirements outlined in (B), a petition against a minor must list:

(1) the minor's name, address, and either age or date of birth; and

(2) if known or can be easily ascertained, the names and addresses of the minor's parent or parents, guardian, or custodian.

(D) Other Pending Actions; Order, Judgments.

(1) The petition must specify whether there are any other pending actions in this or any other court, or orders or judgments already entered by this or any other court affecting the parties, including the name of the court and the case number, if known.

(a) If the petition is filed in the same court as a pending action or where an order or judgment has already been entered by that court affecting the parties, it shall be assigned to the same judge.

(b) If there are pending actions in another court or orders or judgments already entered by another court affecting the parties, the court should contact the court where the pending actions were filed or orders or judgments were entered, if practicable, to determine any relevant information.

(2) If the prior action resulted in an order providing for continuing jurisdiction of a minor, and the new action requests relief with regard to the minor, the court must comply with MCR 3.205.

(E) Venue.

(1) If the respondent is an adult, the petitioner may file a personal protection action in any county in Michigan regardless of residency.

(2) If the respondent is a minor, the petitioner may file a personal protection order in either the petitioner's or respondent's county of residence. If the respondent does not live in this state, venue for the action is proper in the petitioner's county of residence.

(F) Minor or Legally Incapacitated Individual as Petitioner.

(1) If the petitioner is a minor or a legally incapacitated individual, the petitioner shall proceed through a next friend. The petitioner shall certify that the next friend is not disqualified by statute and that the next friend is an adult.

(2) Unless the court determines appointment is necessary, the next friend may act on behalf of the minor or legally incapacitated person without appointment. However, the court shall appoint a next friend if the minor is less than 14 years of age. The next friend is not responsible for the costs of the action.

(G) Request for Ex Parte Order. If the petition requests an ex parte order, the petition must set forth specific facts showing that immediate and irreparable injury, loss, or damage will result to the petitioner from the delay required to effect notice or from the risk that notice will itself precipitate adverse action before an order can be issued.

Rule 3.704 Dismissal

Except as specified in MCR 3.705(A)(5) and (B), an action for a personal protection order may only be dismissed upon motion by the petitioner prior to the issuance of an order. There is no fee for such a motion.

Rule 3.705 Issuance of Personal Protection Orders

(A) Ex Parte Orders.

(1) The court must rule on a request for an ex parte order within 24 hours of the filing of the petition.

(2) If it clearly appears from specific facts shown by verified complaint, written petition, or affidavit that the petitioner is entitled to the relief sought, an ex parte order shall be granted if immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before a personal protection order can be issued. In a proceeding under MCL 600.2950a, the court must state in writing the specific reasons for issuance of the order. A permanent record or memorandum must be made of any nonwritten evidence, argument or other representations made in support of issuance of an ex parte order.

(3) An ex parte order is valid for not less than 182 days, and must state its expiration date.

(4) If an ex parte order is entered, the petitioner shall serve the petition and order as provided in MCR 3.706(D). However, failure to make service does not affect the order's validity or effectiveness.

(5) If the court refuses to grant an ex parte order, it shall state the reasons in writing and shall advise the petitioner of the right to request a hearing as provided in subrule (B). If the petitioner does not request a hearing within 21 days of entry of the order, the order denying the petition is final. The court shall not be required to give such notice if the court determines after interviewing the petitioner that the petitioner's claims are sufficiently without merit that the action should be dismissed without a hearing.

(B) Hearings.

(1) The court shall schedule a hearing as soon as possible in the following instances, unless it determines after interviewing the petitioner that the claims are sufficiently without merit that the action should be dismissed without a hearing:

(a) the petition does not request an ex parte order; or

(b) the court refuses to enter an ex parte order and the petitioner subsequently requests a hearing.

(2) The petitioner shall serve on the respondent notice of the hearing along with the petition as provided in MCR 2.105(A). If the respondent is a minor, and the where-abouts of the respondent's parent or parents, guardian, or custodian is known, the petitioner shall also in the same manner serve notice of the hearing and the petition on the respondent's parent or parents, guardian, or custodian. One day before the hearing is deemed sufficient notice.

(3) The hearing shall be held on the record.

(4) The petitioner must attend the hearing. If the petitioner fails to attend the hearing, the court may adjourn and reschedule the hearing or dismiss the petition.

(5) If the respondent fails to appear at a hearing on the petition and the court determines the petitioner made diligent attempts to serve the respondent, whether the respondent was served or not, the order may be entered without further notice to the respondent if the court determines that the petitioner is entitled to relief.

(6) At the conclusion of the hearing the court must state the reasons for granting or denying a personal protection order on the record and enter an appropriate order. In addition, the court must state the reasons for denying a personal protection order in writing, and, in a proceeding under MCL 600.2950a, the court must state in writing the specific reasons for issuance of the order.

Rule 3.706 Orders

(A) Form and Scope of Order. An order granting a personal protection order must include the following:

(1) A statement that the personal protection order has been entered, listing the type or types of conduct enjoined.

(2) A statement that the personal protection order is effective when signed by the judge and is immediately enforceable anywhere in Michigan, and that, after service, the personal protecion order may be enforced by another state, an Indian tribe, or a territory of the United States.

(3) A statement that violation of the personal protection order will subject the individual restrained or enjoined to either of the following:

(a) If the respondent is 17 years of age or more, immediate arrest and, if the respondent is found guilty of criminal contempt, imprisonment for not more than 93 days and may be fined not more than $500; or

(b) If the respondent is less than 17 years of age, immediate apprehension and, if the respondent is found in contempt, the dispositional alternatives listed in MCL 712A.18.

(4) An expiration date stated clearly on the face of the order.

(5) A statement that the personal protection order is enforceable anywhere in Michigan by any law enforcement agency, and that if the respondent violates the personal protection order in another jurisdiction, the respondent is subject to the enforcement procedures and penalties of the jurisdiction in which the violation occurred.

(6) Identification of the law enforcement agency, designated by the court to enter the personal protection order into the law enforcement information network.

(7) For ex parte orders, a statement that, within 14 days after being served with or receiving actual notice of the order, the individual restrained or enjoined may file a motion to modify or terminate the personal protection order and a request for a hearing, and that motion forms and filing instructions are available from the clerk of the court.

(B) Mutual Orders Prohibited. A personal protection order may not be made mutual.

(C) Existing Custody and Parenting Time Orders.

(1) Contact With Court Having Prior Jurisdiction. The court issuing a personal protection order must contact the court having jurisdiction over the parenting time or custody matter as provided in MCR 3.205, and where practicable, the judge should consult with that court, as contemplated in MCR 3.205(C)(2), regarding the impact upon custody and parenting time rights before issuing the personal protection order.

(2) Conditions Modifying Custody and Parenting Time Provisions. If the respondent's custody or parenting time rights will be adversely affected by the personal protection order, the issuing court shall determine whether conditions should be specified in the order which would accommodate the respondent's rights or whether the situation is such that the safety of the petitioner and minor children would be compromised by such conditions.

(3) Effect of Personal Protection Order. A personal protection order takes precedence over any existing custody or parenting time order until the personal protection order has expired, or the court having jurisdiction over the custody or parenting time order modifies the custody or parenting time order to accommodate the conditions of the personal protection order.

(a) If the respondent or petitioner wants the existing custody or parenting time order modified, the respondent or petitioner must file a motion with the court having jurisdiction of the custody or parenting time order and request a hearing. The hearing must be held within 21 days after the motion is filed.

(b) Proceedings to modify custody and parenting time orders are subject to subchapter 3.200.

(D) Service. The petitioner shall serve the order on the respondent as provided in MCR 2.105(A). If the respondent is a minor, and the whereabouts of the respondent's parent or parents, guardian, or custodian is known, the petitioner shall also in the same manner serve the order on the respondent's parent or

parents, guardian, or custodian. On an appropriate showing, the court may allow service in another manner as provided in MCR 2.105(I). Failure to serve the order does not affect its validity or effectiveness.

(E) Oral Notice. If oral notice of the order is made by a law enforcement officer as described in MCL 600.2950(22) or 600.2950a(19), proof of the notification must be filed with the court by the law enforcement officer.

Rule 3.707 Modification, Termination, or Extension of Order

(A) Modification or Termination.

(1) Time for Filing and Service.

(a) The petitioner may file a motion to modify or terminate the personal protection order and request a hearing at any time after the personal protection order is issued.

(b) The respondent may file a motion to modify or terminate the personal protection order and request a hearing within 14 days after being served with, or receiving actual notice of, the order unless good cause is shown for filing the motion after the 14 days have elapsed.

(c) The moving party shall serve the motion to modify or terminate the order and the notice of hearing at least 7 days before the hearing date as provided in MCR 2.105(A)(2) at the mailing address or addresses provided to the court. On an appropriate showing, the court may allow service in another manner as provided in MCR 2.105(I). If the moving party is a respondent who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of employment, a police officer certified by the Michigan law enforcement training council act of 1965, 1965 PA 203, MCL 28.601 to 28.616, a sheriff, a deputy sheriff or a member of the Michigan department of state police, a local corrections officer, department of corrections employee, or a federal law enforcement officer who carries a firearm during the normal course of employment, providing notice one day before the hearing is deemed as sufficient notice to the petitioner.

(2) Hearing on the Motion. The court must schedule and hold a hearing on a motion to modify or terminate a personal protection order within 14 days of the filing of the motion, except that if the respondent is a person described in MCL 600.2950(2) or 600.2950a(2), the court shall schedule the hearing on the motion within 5 days after the filing of the motion.

(3) Notice of Modification or Termination. If a personal protection order is modified or terminated, the clerk must immediately notify the law enforcement agency specified in the personal protection order of the change. A modified or terminated order must be served as provided in MCR 2.107.

(B) Extension of Order.

(1) Time for Filing. The petitioner may file an ex parte motion to extend the effectiveness of the order, without hearing, by requesting a new expiration date. The motion must be filed with the court that issued the personal

protection order no later than 3 days before the order is to expire. The court must act on the motion within 3 days after it is filed. Failure to timely file a motion to extend the effectiveness of the order does not preclude the petitioner from commencing a new personal protection action regarding the same respondent, as provided in MCR 3.703.

(2) Notice of Extension. If the expiration date on a personal protection order is extended, an amended order must be entered. The clerk must immediately notify the law enforcement agency specified in the personal protection order of the change. The order must be served on the respondent as provided in MCR 2.107.

(C) Minors and Legally Incapacitated Individuals. Petitioners or respondents who are minors or legally incapacitated individuals must proceed through a next friend, as provided in MCR 3.703(F).

(D) Fees. There are no motion fees for modifying, terminating, or extending a personal protection order.

Rule 3.708 Contempt Proceedings for Violation of Personal Protection Orders

(A) In General.

(1) A personal protection order is enforceable under MCL 600.2950(23),(25),600.2950a(20),(22), 764.15b, and 600.1701 *et seq.* For the purpose of this rule, "personal protection order" includes a foreign protection order enforceable in Michigan under MCL 600.2950*1.*

(2) Proceedings to enforce a minor personal protection order where the respondent is under 18 are governed by subchapter 3.900. Proceedings to enforce a personal protection order issued against an adult, or to enforce a minor personal protection order still in effect when the respondent is 18 or older, are governed by this rule.

(B) Motion to Show Cause.

(1) Filing. If the respondent violates the personal protection order, the petitioner may file a motion, supported by appropriate affidavit, to have the respondent found in contempt. There is no fee for such a motion. If the petitioner's motion and affidavit establish a basis for a finding of contempt, the court shall either:

(a) order the respondent to appear at a specified time to answer the contempt charge; or

(b) issue a bench warrant for the arrest of the respondent.

(2) Service. The petitioner shall serve the motion to show cause and the order on the respondent by personal service at least 7 days before the show cause hearing.

(C) Arrest.

(1) If the respondent is arrested for violation of a personal protection order as provided in MCL 764.15b(1), the court in the county where the arrest is made shall proceed as provided in MCL 764.15b(2)-(5), except as provided in this rule.

(2) A contempt proceeding brought in a court other than the one that issued the personal protection order shall be entitled "In the Matter of Contempt of [Respondent]." The clerk shall provide a copy of any documents pertaining to the contempt proceeding to the court that issued the personal protection order.

(3) If it appears that a circuit judge will not be available within 24 hours after arrest, the respondent shall be taken, within that time, before a district court, which shall set bond and order the respondent to appear for arraignment before the family division of the circuit court in that county.

(D) Appearance or Arraignment; Advice to Respondent. At the respondent's first appearance before the circuit court, whether for arraignment under MCL 764.15b, enforcement under MCL 600.2950, 600.2950a, or 600.1701, or otherwise, the court must:

(1) advise the respondent of the alleged violation,

(2) advise the respondent of the right to contest the charge at a contempt hearing,

(3) advise the respondent that he or she is entitled to a lawyer's assistance at the hearing and, if the court determines it might sentence the respondent to jail, that the court will appoint a lawyer at public expense if the individual wants one and is financially unable to retain one,

(4) if requested and appropriate, appoint a lawyer,

(5) set a reasonable bond pending a hearing of the alleged violation,

(6) take a guilty plea as provided in subrule (E) or schedule a hearing as provided in subrule (F).

(E) Pleas of Guilty. The respondent may plead guilty to the violation. Before accepting a guilty plea, the court, speaking directly to the respondent and receiving the respondent's response, must

(1) advise the respondent that by pleading guilty the respondent is giving up the right to a contested hearing and, if the respondent is proceeding without legal representation, the right to a lawyer's assistance as set forth in subrule (D)(3),

(2) advise the respondent of the maximum possible jail sentence for the violation,

(3) ascertain that the plea is understandingly, voluntarily, and knowingly made, and

(4) establish factual support for a finding that the respondent is guilty of the alleged violation.

(F) Scheduling or Postponing Hearing. Following the respondent's appearance or arraignment, the court shall do the following:

(1) Set a date for the hearing at the earliest practicable time except as required under MCL 764.15b.

(a) The hearing of a respondent being held in custody for an alleged violation of a personal protection order must be held within 72 hours after the arrest, unless extended by the court on the motion of the arrested individual or the prosecuting attorney. The court must set a reasonable bond pending the hearing unless the court determines that release will not reasonably ensure the safety of the individuals named in the personal protection order.

(b) If a respondent is released on bond pending the hearing, the bond may include any condition specified in MCR 6.106(D) necessary to reasonably ensure the safety of the individuals named in the personal protection order, including continued compliance with the personal protection order. The release order shall also comply with MCL 765.6b.

(c) If the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, upon motion of the prosecutor, the court may postpone the hearing for the outcome of that prosecution.

(2) Notify the prosecuting attorney of a criminal contempt proceeding.

(3) Notify the petitioner and his or her attorney, if any, of the contempt proceeding and direct the party to appear at the hearing and give evidence on the charge of contempt.

(G) Prosecution After Arrest. In a criminal contempt proceeding commenced under MCL 764.15b, the prosecuting attorney shall prosecute the proceeding unless the petitioner retains his or her own attorney for the criminal contempt proceeding.

(H) The Violation Hearing.

(1) Jury. There is no right to a jury trial.

(2) Conduct of the Hearing. The respondent has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses.

(3) Evidence; Burden of Proof. The rules of evidence apply to both criminal and civil contempt proceedings. The petitioner or the prosecuting attorney has the burden of proving the respondent's guilt of criminal contempt beyond a reasonable doubt and the respondent's guilt of civil contempt by clear and convincing evidence.

(4) Judicial Findings. At the conclusion of the hearing, the court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

(5) Sentencing.

(a) If the respondent pleads or is found guilty of criminal contempt, the court shall impose a sentence of incarceration for no more than 93 days and may impose a fine of not more than $500.00.

(b) If the respondent pleads or is found guilty of civil contempt, the court shall impose a fine or imprisonment as specified in MCL 600.1715 and 600.1721.

In addition to such a sentence, the court may impose other conditions to the personal protection order.

Rule 3.709 Appeals

(A) Rules Applicable. Except as provided by this rule, appeals involving personal protection order matters must comply with subchapter 7.200. Appeals involving minor personal protection actions under the Juvenile Code must additionally comply with MCR 3.993.

(B) From Entry of Personal Protection Order.

(1) Either party has an appeal of right from

(a) an order granting or denying a personal protection order after a hearing under subrule 3.705(B)(6), or

(b) the ruling on respondent's first motion to rescind or modify the order if an ex parte order was entered.

(2) Appeals of all other orders are by leave to appeal.

(C) From Finding after Violation Hearing.

(1) The respondent has an appeal of right from a sentence for criminal contempt entered after a contested hearing.

(2) All other appeals concerning violation proceedings are by application for leave.

Subchapter 3.800 Adoption

Rule 3.800 Applicable Rules

(A) Generally. Except as modified by MCR 3.801-3.806, adoption proceedings are governed by the rules generally applicable to civil proceedings.

(B) Interested Parties. The persons interested in various adoption proceedings are as provided by MCL 710.24a, except that the interested persons in a petition to terminate the rights of the noncustodial parent pursuant to MCL 710.51(6) are:

(a) the petitioner;

(b) the adoptee, if over 14 years of age; and

(c) the noncustodial parent.

Rule 3.801 Papers, Execution

(A) A waiver, affirmation, or disclaimer to be executed by the father of a child born out of wedlock may be executed any time after the conception of the child.

(B) A release or consent is valid if executed in accordance with the law at the time of execution.

Rule 3.802 Manner and Method of Service

(A) Service of Papers.

(1) A notice of intent to release or consent pursuant to MCL 710.34(1) may only be served by personal service by a peace officer or a person authorized by the court.

(2) Notice of a petition to identify a putative father and to determine or terminate his rights, or a petition to terminate the rights of a noncustodial parent, must be served on the individual or the individual's attorney in the manner provided in MCR 5.105(B)(1)(a) or (b).

(3) Except as provided in subrules (B) and (C), all other papers may be served by mail under MCR 2.107(C)(3).

(B) Service When Identity or Whereabouts of Father is Unascertainable

(1) If service cannot be made under subrule (A)(2) because the identity of the father of a child born out of wedlock or the whereabouts of the identified father has not been ascertained after diligent inquiry, the petitioner must file proof, by affidavit or by declaration under MCR 2.114(B)(2), of the attempt to identify or locate the father. No further service is necessary before the hearing to identify the father and to determine or terminate his rights.

(2) At the hearing, the court shall take evidence concerning the attempt to identify or locate the father. If the court finds that a reasonable attempt was made, the court shall proceed under MCL 710.37(2). If the court finds that a

reasonable attempt was not made, the court shall adjourn the hearing under MCL 710.36(7) and shall

(a) order a further attempt to identify or locate the father so that service can be made under subrule (A)(2)(a), or

(b) direct any manner of substituted service of the notice of hearing except service by publication.

(C) Service When Whereabouts of Noncustodial Parent Is Unascertainable. If service of a petition to terminate the parental rights of a noncustodial parent pursuant to MCL 710.51(6) cannot be made under subrule (A)(2)(b) because the whereabouts of the noncustodial parent has not been ascertained after diligent inquiry, the petitioner must file proof, by affidavit or by declaration under MCR 2.114 (B)(2), of the attempt to locate the noncustodial parent. If the court finds, on reviewing the affidavit or declaration, that service cannot be made because the whereabouts of the person has not been determined after reasonable effort, the court may direct any manner of substituted service of the notice of hearing, including service by publication.

Rule 3.803 Financial Reports, Subsequent Orders

(A) Updated Accounting and Statements.

(1) The update of the accounting filed pursuant to MCL 710.54(8) may include by reference the total expenses itemized in the accounting required by MCL 710.54(7).

(2) Any verified statement filed pursuant to MCL 710.54(7) need not be filed again unless, at the time of the update required by MCL 710.54(8), any such statement does not reflect the facts at that time.

(B) Subsequent Orders.

(1) Only one order approving fees disclosed in the financial reports by MCL 710.54(7) need be entered, and it must be entered after the filing required by MCL 710.54(8).

(2) The order placing the child may be entered before the elapse of the 7-day period required by MCL 710.54(7).

(3) The final order of adoption may be entered before the elapse of the 21-day period required by MCL 710.54(8).

Rule 3.804 Consent Hearing

The consent hearing required by MCL.710.44(1) must be promptly scheduled by the court after the court examines and approves the report of the investigation or foster family study filed pursuant to MCL 710.46. If an interested party has requested a consent hearing, the hearing shall be held within 7 days of the filing of the report or foster family study.

Rule 3.805 Temporary Placements, Time for Service of Notice of Hearing to Determine Disposition of Child

(A) Time for Personal Service. Personal service of notice of hearing on a petition for disposition of a child pursuant to MCL 710.23e(1) must be served at least 3 days before the date set for hearing.

(B) Time for Service by Mail. Service by mail must be made at least 7 days before the date set for hearing.

(C) Interested Party, Whereabouts Unknown. If the whereabouts of an interested party, other than the putative father who did not join in the temporary placement, is unknown, service on that interested party will be sufficient if personal service or service by mail is attempted at the last known address of the interested party.

(D) Putative Father, Identity or Whereabouts Unknown. If the identity of the putative father is unknown or the whereabouts of a putative father who did not join in the temporary placement is unknown, he need not be served notice of the hearing.

Rule 3.806 Rehearings

(A) Filing, Notice and Response. A party may seek rehearing under MCL 710.64(1) by timely filing a petition stating the basis for rehearing. Immediately upon filing the petition, the petitioner must give all interested parties notice of its filing in accordance with MCR 5.105. Any interested party may file a response within 7 days of the date of service of notice on the interested party.

(B) Procedure for Determining Whether to Grant a Rehearing. The court must base a decision on whether to grant a rehearing on the record, the pleading filed, or a hearing on the petition. The court may grant a rehearing only for good cause. The reasons for its decision must be in writing or stated on the record.

(C) Procedure if Rehearing Granted. If the court grants a rehearing, the court may, after notice, take new evidence on the record. It may affirm, modify, or vacate its prior decision in whole or in part. The court must state the reasons for its action in writing or on the record.

(D) Stay. Pending a ruling on the petition for rehearing, the court may stay any order, or enter another order in the best interest of the minor.

Subchapter 3.900 Proceedings Involving Juveniles

Rule 3.901 Applicability of Rules

(A) Scope.

(1) The rules in this subchapter, in subchapter 1.100 and in MCR 5.113, govern practice and procedure in the family division of the circuit court in all cases filed under the Juvenile Code.

(2) Other Michigan Court Rules apply to juvenile cases in the family division of the circuit court only when this subchapter specifically provides.

(3) The Michigan Rules of Evidence, except with regard to privileges, do not apply to proceedings under this subchapter, except where a rule in this subchapter specifically so provides. MCL 722.631 governs privileges in child protective proceedings.

(B) Application. Unless the context otherwise indicates:

(1) MCR 3.901-3.930, 3.980, and 3.991-3.993 apply to delinquency proceedings and child protective proceedings;

(2) MCR 3.931-3.950 apply only to delinquency proceedings;

(3) MCR 3.951-3.956 apply only to designated proceedings;

(4) MCR 3.961-3.978 apply only to child protective proceedings;

(5) MCR 3.981-3.989 apply only to minor personal protection order proceedings.

Rule 3.902 Construction

(A) In General. The rules are to be construed to secure fairness, flexibility, and simplicity. The court shall proceed in a manner that safeguards the rights and proper interests of the parties. Limitations on corrections of error are governed by MCR 2.613.

(B) Philosophy. The rules must be interpreted and applied in keeping with the philosophy expressed in the Juvenile Code. The court shall ensure that each minor coming within the jurisdiction of the court shall:

(1) receive the care, guidance, and control, preferably in the minor's own home, that is conducive to the minor's welfare and the best interests of the public; and

(2) when removed from parental control, be placed in care as nearly as possible equivalent to the care that the minor's parents should have given the minor.

Rule 3.903 Definitions

(A) General Definitions. When used in this subchapter, unless the context otherwise indicates:

(1) "Case" means an action initiated in the family division of the circuit court by:

(a) submission of an original complaint, petition, or citation;

(b) acceptance of transfer of an action from another court or tribunal; or

(c) filing or registration of a foreign judgment or order.

(2) "Child protective proceeding" means a proceeding concerning an offense against a child.

(3) "Confidential file" means

(a) that part of a file made confidential by statute or court rule, including, but not limited to,

(i) the diversion record of a minor pursuant to the Juvenile Diversion Act, MCL 722.821 *et seq.;*

(ii) the separate statement about known victims of juvenile offenses, as required by the Crime Victim's Rights Act, MCL 780.751 *et seq*.;

(iii) the testimony taken during a closed proceeding pursuant to MCR 3.925(A)(2) and MCL 712A.17(7);

(iv) the dispositional reports pursuant to MCR 3.943(C)(3) and 3.973(E)(4);

(v) fingerprinting material required to be maintained pursuant to MCL 28.243;

(vi) reports of sexually motivated crimes, MCL 28.247;

(vii) test results of those charged with certain sexual offenses or substance abuse offenses, MCL 333.5129;

(b) the contents of a social file maintained by the court, including materials such as

(i) youth and family record fact sheet;

(ii) social study;

(iii) reports (such as dispositional, investigative, laboratory, medical, observation, psychological, psychiatric, progress, treatment, school, and police reports);

(iv) Department of Human Services records;

(v) correspondence;

(vi) victim statements;

(vii) information regarding the identity or location of a foster parent, preadoptive parent, or relative caregiver.

(4) "Court" means the family division of the circuit court.

(5) "Delinquency proceeding" means a proceeding concerning an offense by a juvenile, as defined in MCR 3.903(B)(3).

(6) "Designated proceeding" means a proceeding in which the prosecuting attorney has designated, or has requested the court to designate, the case for trial in the family division of the circuit court in the same manner as an adult.

(7) "Father" means:

(a) A man married to the mother at any time from a minor's conception to the minor's birth, unless a court has determined, after notice and a hearing, that the minor was conceived or born during the marriage, but is not the issue of the marriage;

(b) A man who legally adopts the minor;

(c) A man who by order of filiation or by judgment of paternity is judicially determined to be the father of the minor;

(d) A man judicially determined to have parental rights; or

(e) A man whose paternity is established by the completion and filing of an acknowledgment of parentage in accordance with the provisions of the Acknowledgment of Parentage Act, MCL 722.1001 *et seq*., or a previously applicable procedure. For an acknowledgment under the Acknowledgment of Parentage Act, the man and mother must each sign the acknowledgment of parentage before a notary public appointed in this state. The acknowledgment shall be filed at either the time of birth or another time during the child's lifetime with the state registrar.

(8) "File" means a repository for collection of the pleadings and other documents and materials related to a case.

(9) An authorized petition is deemed "filed" when it is delivered to, and accepted by, the clerk of the court.

(10) "Formal calendar" means judicial proceedings other than a delinquency proceeding on the consent calendar, a preliminary inquiry, or a preliminary hearing of a delinquency or child protective proceeding.

(11) "Guardian" means a person appointed as guardian of a child by a Michigan court pursuant to MCL 700.5204 or 700.5205, by a court of another state under a comparable statutory provision, or by parental or testamentary appointment as provided in MCL 700.5202.

(12) "Juvenile Code" means 1944 (1st Ex Sess) PA 54, MCL 712A.1 *et seq*., as amended.

(13) "Legal Custodian" means an adult who has been given legal custody of a minor by order of a circuit court in Michigan or a comparable court of another state or who possesses a valid power of attorney given pursuant to MCL 700.5103 or a comparable statute of another state.

(14) "Legally admissible evidence" means evidence admissible under the Michigan Rules of Evidence.

(15) "Minor" means a person under the age of 18, and may include a person of age 18 or older over whom the court has continuing jurisdiction pursuant to MCL 712A.2a.

(16) "Officer" means a government official with the power to arrest or any other person designated and directed by the court to apprehend, detain, or place a minor.

(17) "Parent" means the mother, the father as defined in MCR 3.903(A)(7), or both, of the minor.

(18) "Party" includes the

(a) petitioner and juvenile in a delinquency proceeding;

(b) petitioner, child, respondent, and parent, guardian, or legal custodian in a protective proceeding.

(19) "Petition" means a complaint or other written allegation, verified in the manner provided in MCR 2.114(B), that a parent, guardian, nonparent adult, or legal custodian has harmed or failed to properly care for a child, or that a juvenile has committed an offense.

(20) "Petition authorized to be filed" refers to written permission given by the court to file the petition containing the formal allegations against the juvenile or respondent with the clerk of the court.

(21) "Petitioner" means the person or agency who requests the court to take action.

(22) "Preliminary inquiry" means informal review by the court to determine appropriate action on a petition.

(23) "Putative father" means a man who is alleged to be the biological father of a child who has no father as defined in MCR 3.903(A)(7).

(24) "Records" means the pleadings, motions, authorized petition, notices, memorandums, briefs, exhibits, available transcripts, findings of the court, register of actions, and court orders.

(25) "Register of actions" means the permanent case history maintained in accord with the Michigan Supreme Court Case File Management Standards. See MCR 8.119(D)(1)(c).

(26) "Trial" means the fact-finding adjudication of an authorized petition to determine if the minor comes within the jurisdiction of the court.

(B) Delinquency Proceedings. When used in delinquency proceedings, unless the context otherwise indicates:

(1) "Detention" means court-ordered removal of a juvenile from the custody of a parent, guardian, or legal custodian, pending trial, disposition, commitment, or further order.

(2) "Juvenile" means a minor alleged or found to be within the jurisdiction of the court for having committed an offense.

(3) "Offense by a juvenile" means an act that violates a criminal statute, a criminal ordinance, a traffic law, or a provision of MCL 712A.2(a) or (d).

(4) "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, a special prosecuting attorney, and, in connection with the prosecution of an ordinance violation, an attorney for the political subdivision or governmental entity that enacted the ordinance, charter, rule, or regulation upon which the ordinance violation is based.

(C) Child Protective Proceedings. When used in child protective proceedings, unless the context otherwise indicates:

(1) "Agency" means a public or private organization, institution, or facility responsible pursuant to court order or contractual arrangement for the care and supervision of a child.

(2) "Child" means a minor alleged or found to be within the jurisdiction of the court pursuant to MCL 712A.2(b).

(3) "Contrary to the welfare of the child" includes, but is not limited to, situations in which the child's life, physical health, or mental well-being is unreasonably placed at risk.

(4) "Foster care" means 24-hour a day substitute care for children placed away from their parents, guardians, or legal custodians, and for whom the court has given the Department of Human Services placement and care responsibility, including, but not limited to,

(a) care provided to a child in a foster family home, foster family group home, or child caring institution licensed or approved under MCL 722.111 *et seq*., or

(b) care provided to a child in a relative's home pursuant to an order of the court.

(5) "Lawyer-guardian ad litem" means that term as defined in MCL 712A.13a(1)(f).

(6) "Nonparent adult" means a person who is 18 years of age or older and who, regardless of the person's domicile, meets all the following criteria in relation to a child over whom the court takes jurisdiction under this chapter:

(a) has substantial and regular contact with the child,

(b) has a close personal relationship with the child's parent or with a person responsible for the child's health or welfare, and

(c) is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.

(7) "Offense against a child" means an act or omission by a parent, guardian, nonparent adult, or legal custodian asserted as grounds for bringing the child within the jurisdiction of the court pursuant to the Juvenile Code.

(8) "Placement" means court-approved transfer of physical custody of a child to foster care, a shelter home, a hospital, or a private treatment agency.

(9) "Prosecutor" or "prosecuting attorney" means the prosecuting attorney of the county in which the court has its principal office or an assistant to the prosecuting attorney.

(10) Except as provided in MCR 3.977(B), "respondent" means the parent, guardian, legal custodian, or nonparent adult who is alleged to have committed an offense against a child.

(D) Designated Proceedings.

(1) "Arraignment" means the first hearing in a designated case at which

(a) the juvenile is informed of the allegations, the juvenile's rights, and the potential consequences of the proceeding;

(b) the matter is set for a probable cause or designation hearing; and,

(c) if the juvenile is in custody or custody is requested pending trial, a decision is made regarding custody pursuant to MCR 3.935(C).

(2) "Court-designated case" means a case in which the court, pursuant to a request by the prosecuting attorney, has decided according to the factors set forth in MCR 3.952(C)(3) that the juvenile is to be tried in the family division of circuit court in the same manner as an adult for an offense other than a specified juvenile violation.

(3) "Designated case" means either a prosecutor-designated case or a court-designated case.

(4) "Designation hearing" means a hearing on the prosecuting attorney's request that the court designate the case for trial in the same manner as an adult in the family division of circuit court.

(5) "Preliminary examination" means a hearing at which the court determines whether there is probable cause to believe that the specified juvenile violation or alleged offense occurred and whether there is probable cause to believe that the juvenile committed the specified juvenile violation or alleged offense.

(6) "Prosecutor-designated case" means a case in which the prosecuting attorney has endorsed a petition charging a juvenile with a specified juvenile violation with the designation that the juvenile is to be tried in the same manner as an adult in the family division of the circuit court.

(7) "Sentencing" means the imposition of any sanction on a juvenile that could be imposed on an adult convicted of the offense for which the juvenile was convicted or the decision to delay the imposition of such a sanction.

(8) "Specified juvenile violation" means any offense, attempted offense, conspiracy to commit an offense, or solicitation to commit an offense, as enumerated in MCL 712A.2d, that would constitute:

(a) burning of a dwelling house, MCL 750.72;

(b) assault with intent to commit murder, MCL 750.83;

(c) assault with intent to maim, MCL 750.86;

(d) assault with intent to rob while armed, MCL 750.89;

(e) attempted murder, MCL 750.91;

(f) first-degree murder, MCL 750.316;

(g) second-degree murder, MCL 750.317;

(h) kidnaping, MCL 750.349;

(i) first-degree criminal sexual conduct, MCL 750.520b;

(j) armed robbery, MCL 750.529;

(k) carjacking, MCL 750.529a;

(l) robbery of a bank, safe, or vault, MCL 750.531;

(m) possession, manufacture, or delivery of, or possession with intent to manufacture or deliver, 650 grams(1,000 grams beginning March 1, 2003) or more of any schedule 1 or 2 controlled substance, MCL 333.7401, 333.7403;

(n) assault with intent to do great bodily harm less than murder, MCL 750.84, if armed with a dangerous weapon as defined by MCL 712A.2d(9)(b);

(o) first-degree home invasion, MCL 750.110a(2), if armed with a dangerous weapon as defined by MCL 712A.2d(9)(b);

(p) escape or attempted escape from a medium security or high security facility operated by the Department of Human Services or a high-security facility operated by a private agency under contract with the Department of Human Services, MCL 750.186a;

(q) any lesser-included offense of an offense described in subrules (a)-(p), if the petition alleged that the juvenile committed an offense described in subrules (a)-(p); or

(r) any offense arising out of the same transaction as an offense described in subrules (a)-(p), if the petition alleged that the juvenile committed an offense described in subrules (a)-(p).

(9) "Tried in the same manner as an adult" means a trial in which the juvenile is afforded all the legal and procedural protections that an adult would be given if charged with the same offense in a court of general criminal jurisdiction.

(E) Minor Personal Protection Order Proceedings. When used in minor personal protection order proceedings, unless the context otherwise indicates:

(1) "Minor personal protection order" means a personal protection order issued by a court against a minor under jurisdiction granted by MCL 712A.2(h).

(2) "Original petitioner" means the person who originally petitioned for the minor personal protection order.

(3) "Prosecutor" or "prosecuting attorney" means the prosecuting attorney of the county in which the court has its principal office or an assistant to the prosecuting attorney.

Rule 3.904. Use of Interactive Video Technology.

(A)Facilities. Courts may use two-way interactive video technology to conduct the proceedings outlined in subrule (B).

(B) Hearings.

(1) Delinquency Proceedings. Two-way interactive video technology may be used to conduct preliminary hearings under MCR 3.935(A)(1), postdispositional progress reviews, and dispositional hearings where the court does not order a more restrictive placement or more restrictive treatment

(2) Child Protective Proceedings. Two-way interactive video technology may be used to conduct preliminary hearings or review hearings.

(C) Mechanics of Use. The use of two-way interactive video technology must be conducted in accordance with any requirements and guidelines established by the State Court Administrative Office. All proceedings at which such technology is used must be recorded verbatim by the court.

Rule 3.911 Jury

(A) Right. The right to a jury in a juvenile proceeding exists only at the trial.

(B) Jury Demand. A party who is entitled to a trial by jury may demand a jury by filing a written demand with the court within:

(1) 14 days after the court gives notice of the right to jury trial, or

(2) 14 days after an appearance by an attorney or lawyer-guardian ad litem, whichever is later, but no later than 21 days before trial.

The court may excuse a late filing in the interest of justice.

(C) Jury Procedure. Jury procedure in juvenile cases is governed by MCR 2.508-2.516, except as provided in this subrule.

(1) In a delinquency proceeding,

(a) each party is entitled to 5 peremptory challenges, and

(b) the verdict must be unanimous.

(2) In a child protective proceeding,

(a) each party is entitled to 5 peremptory challenges, with the child considered a separate party, and

(b) a verdict in a case tried by 6 jurors will be received when 5 jurors agree.

(3) Two or more parties on the same side, other than a child in a child protective proceeding, are considered a single party for the purpose of peremptory challenges.

(a) When two or more parties are aligned on the same side and have adverse interests, the court shall allow each such party represented by a different attorney 3 peremptory challenges.

(b) When multiple parties are allowed more than 5 peremptory challenges under this subrule, the court may allow the opposite side a total number of peremptory challenges not to exceed the number allowed to the multiple parties.

(4) In a designated case, jury procedure is governed by MCR 6.401-6.420.

Rule 3.912 Judge

(A) Judge Required. A judge must preside at:

(1) a jury trial;

(2) a waiver proceeding under MCR 3.950;

(3) the preliminary examination, trial, and sentencing in a designated case;

(4) a proceeding on the issuance, modification, or termination of a minor personal protection order.

(B) Right; Demand. The parties have the right to a judge at a hearing on the formal calendar. A party may demand that a judge rather than a referee preside at a nonjury trial by filing a written demand with the court within:

(1) 14 days after the court gives notice of the right to a judge, or

(2) 14 days after an appearance by an attorney or lawyer-guardian ad litem, whichever is later, but no later than 21 days before trial.

The court may excuse a late filing in the interest of justice.

(C) Designated Cases.

(1) The judge who presides at the preliminary examination may not preside at the trial of the same designated case unless a determination of probable cause is waived. The judge who presides at a preliminary examination may accept a plea in the designated case.

(2) The juvenile has the right to demand that the same judge who accepted the plea or presided at the trial of a designated case preside at sentencing or delayed imposition of sentence, but not at a juvenile disposition of the designated case.

(D) Disqualification of Judge. The disqualification of a judge is governed by MCR 2.003.

Rule 3.913 Referees

(A) Assignment of Matters to Referees.

(1) General. Subject to the limitations in subrule (A)(2), the court may assign a referee to conduct a preliminary inquiry or to preside at a hearing other than those specified in MCR 3.912(A) and to make recommended findings and conclusions.

(2) Attorney and Nonattorney Referees.

(a) Delinquency Proceedings. Except as otherwise provided by MCL 712A.10, only a person licensed to practice law in Michigan may serve as a referee at a delinquency proceeding other than a preliminary inquiry or preliminary hearing, if the juvenile is before the court under MCL 712A.2(a)(1).

(b) Child Protective Proceedings. Only a person licensed to practice law in Michigan may serve as a referee at a child protective proceeding other than a preliminary inquiry, preliminary hearing, a progress review under MCR 3.974(A), or an emergency removal hearing under MCR 3.974(B).

(c) Designated Cases. Only a referee licensed to practice law in Michigan may preside at a hearing to designate a case or to amend a petition to designate a case and to make recommended findings and conclusions.

(d) Minor Personal Protection Actions. A nonattorney referee may preside at a preliminary hearing for enforcement of a minor personal protection order. Only a referee licensed to practice law in Michigan may preside at any other hearing for the enforcement of a minor personal protection order and make recommended findings and conclusions.

(B) Duration of Assignment. Unless a party has demanded trial by jury or by a judge pursuant to MCR 3.911 or 3.912, a referee may conduct the trial and further proceedings through disposition.

(C) Advice of Right to Review of Referee's Recommendations. During a hearing held by a referee, the referee must inform the parties of the right to file a request for review of the referee's recommended findings and conclusions as provided in MCR 3.991(B).

Rule 3.914 Prosecuting Attorney

(A) General. On request of the court, the prosecuting attorney shall review the petition for legal sufficiency and shall appear at any child protective proceeding or any delinquency proceeding.

(B) Delinquency Proceedings.

(1) Petition Approval. Only the prosecuting attorney may request the court to take jurisdiction of a juvenile under MCL 712A.2(a)(1).

(2) Appearance. The prosecuting attorney shall participate in every delinquency proceeding under MCL 712A.2(a)(1) that requires a hearing and the taking of testimony.

(C) Child Protective Proceedings.

(1) Legal Consultant to Agency. On request of the Michigan Family Independence Agency or of an agent under contract with the agency, the prosecuting attorney shall serve as a legal consultant to the agency or agent at all stages of a child protective proceeding.

(2) Retention of Counsel. In a child protective proceeding, the agency may retain legal representation of its choice when the prosecuting attorney does not appear on behalf of the agency or an agent under contract with the agency.

(D) Designated Proceedings.

(1) Specified Juvenile Violation. In a case in which the petition alleges a specified juvenile violation, only the prosecuting attorney may designate the case, or request leave to amend a petition to designate the case, for trial of the juvenile in the same manner as an adult.

(2) Other Offenses. In a case in which the petition alleges an offense other than the specified juvenile violation, only the prosecuting attorney may request the court to designate the case for trial of the juvenile in the same manner as an adult.

(E) Minor Personal Protection Orders. The prosecuting attorney shall prosecute criminal contempt proceedings as provided in MCR 3.987(B).

Rule 3.915 Assistance of Attorney

(A) Delinquency Proceedings.

(1) Advice. If the juvenile is not represented by an attorney, the court shall advise the juvenile of the right to the assistance of an attorney at each stage of the proceedings on the formal calendar, including trial, plea of admission, and disposition.

(2) Appointment of an Attorney. The court shall appoint an attorney to represent the juvenile in a delinquency proceeding if:

(a) the parent, guardian, or legal custodian refuses or fails to appear and participate in the proceedings;

(b) the parent, guardian, or legal custodian is the complainant or victim;

(c) the juvenile and those responsible for the support of the juvenile are found financially unable to retain an attorney, and the juvenile does not waive an attorney;

(d) those responsible for the support of the juvenile refuse or neglect to retain an attorney for the juvenile, and the juvenile does not waive an attorney; or

(e) the court determines that the best interests of the juvenile or the public require appointment.

(3) Waiver of Attorney. The juvenile may waive the right to the assistance of an attorney except where a parent, guardian, legal custodian, or guardian ad litem objects or when the appointment is based on subrule (A)(2)(e). The waiver by a juvenile must be made in open court to the judge or referee, who must find and place on the record that the waiver was voluntarily and understandingly made.

(B) Child Protective Proceedings.

(1) Respondent.

(a) At respondent's first court appearance, the court shall advise the respondent of the right to retain an attorney to represent the respondent at any hearing conducted pursuant to these rules and that

(i) the respondent has the right to a court appointed attorney if the respondent is financially unable to retain an attorney, and,

(ii) if the respondent is not represented by an attorney, the respondent may request a court-appointed attorney at any later hearing.

(b) The court shall appoint an attorney to represent the respondent at any hearing conducted pursuant to these rules if

(i) the respondent requests appointment of an attorney, and

(ii) it appears to the court, following an examination of the record, through written financial statements, or otherwise, that the respondent is financially unable to retain an attorney.

(c) The respondent may waive the right to the assistance of an attorney, except that the court shall not accept the waiver by a respondent who is a minor when a parent, guardian, legal custodian, or guardian ad litem objects to the waiver.

(2) Child.

(a) The court must appoint a lawyer-guardian ad litem to represent the child at every hearing, including the preliminary hearing. The child may not waive the assistance of a lawyer-guardian ad litem. The duties of the lawyer-guardian ad litem are as provided by MCL 712A.17d. At each hearing, the court shall inquire whether the lawyer-guardian ad litem has met or had contact with the child, as required by the court or MCL 712A.17d(1)(d) and if the lawyer-guardian ad litem has not met or had contact with the child, the court shall require the lawyer-guardian ad litem to state, on the record, the reasons for failing to do so.

(b) If a conflict arises between the lawyer-guardian ad litem and the child regarding the child's best interests, the court may appoint an attorney to represent the child's stated interests.

(C) Appearance. The appearance of an attorney is governed by MCR 2.117(B).

(D) Duration.

(1) An attorney retained by a party may withdraw only on order of the court.

(2) An attorney or lawyer-guardian ad litem appointed by the court to represent a party shall serve until discharged by the court. The court may permit another attorney to temporarily substitute for the child's lawyer-guardian ad litem at a hearing, if that would prevent the hearing from being adjourned, or for other good cause. Such a substitute attorney must be familiar with the case and, for hearings other than a preliminary hearing or emergency removal hearing, must review the agency case file and consult with the foster parents and caseworker before the hearing unless the child's lawyer-guardian ad litem has done so and communicated that information to the substitute attorney. The court shall

inquire on the record whether the attorneys have complied with the requirements of this subrule.

(E) Costs. When an attorney is appointed for a party under this rule, the court may enter an order assessing costs of the representation against the party or against a person responsible for the support of that party, which order may be enforced as provided by law.

Rule 3.916 Guardian Ad Litem

(A) General. The court may appoint a guardian ad litem for a party if the court finds that the welfare of the party requires it.

(B) Appearance. The appearance of a guardian ad litem must be in writing and in a manner and form designated by the court. The appearance shall contain a statement regarding the existence of any interest that the guardian ad litem holds in relation to the minor, the minor's family, or any other person in the proceeding before the court or in other matters.

(C) Access to Information. The appearance entitles the guardian ad litem to be furnished copies of all petitions, motions, and orders filed or entered, and to consult with the attorney of the party for whom the guardian ad litem has been appointed.

(D) Costs. The court may assess the cost of providing a guardian ad litem against the party or a person responsible for the support of the party, and may enforce the order of reimbursement as provided by law.

Rule 3.917 Court Appointed Special Advocate

(A) General. The court may, upon entry of an appropriate order, appoint a volunteer special advocate to assess and make recommendations to the court concerning the best interests of the child in any matter pending in the family division.

(B) Qualifications. All court appointed special advocates shall receive appropriate screening.

(C) Duties. Each court appointed special advocate shall maintain regular contact with the child, investigate the background of the case, gather information regarding the child's status, provide written reports to the court and all parties before each hearing, and appear at all hearings when required by the court.

(D) Term of Appointment. A court appointed special advocate shall serve until discharged by the court.

(E) Access to Information. Upon appointment by the court, the special advocate may be given access to all information, confidential or otherwise, contained in the court file if the court so orders. The special advocate shall consult with the child's lawyer-guardian ad litem.

Rule 3.920 Service of Process

(A) General.

(1) Unless a party must be summoned as provided in subrule (B), a party shall be given notice of a juvenile proceeding in any manner authorized by the rules in this subchapter.

(2) MCR 2.004 applies in juvenile proceedings involving incarcerated parties.

(B) Summons.

(1) In General. A summons may be issued and served on a party before any juvenile proceeding.

(2) When Required. Except as otherwise provided in these rules, the court shall direct the service of a summons in the following circumstances:

(a) In a delinquency proceeding, a summons must be served on the parent or parents, guardian, or legal custodian having physical custody of the juvenile, directing them to appear with the juvenile for trial. The juvenile must also be served with a summons to appear for trial. A parent without physical custody must be notified by service as provided in subrule (C), unless the whereabouts of the parent remain unknown after a diligent inquiry.

(b) In a child protective proceeding, a summons must be served on the respondent. A summons may be served on a person having physical custody of the child directing such person to appear with the child for hearing. A parent, guardian, or legal custodian who is not a respondent must be served with notice of hearing in the manner provided by subrule (C).

(c) In a personal protection order enforcement proceeding involving a minor respondent, a summons must be served on the minor. A summons must also be served on the parent or parents, guardian, or legal custodian, unless their whereabouts remain unknown after a diligent inquiry.

(3) Content. The summons must direct the person to whom it is addressed to appear at a time and place specified by the court and must:

(a) identify the nature of hearing;

(b) explain the right to an attorney and the right to trial by judge or jury, including, where appropriate, that there is no right to a jury at a termination hearing;

(c) if the summons is for a child protective proceeding, include a prominent notice that the hearings could result in termination of parental rights; and

(d) have a copy of the petition attached.

(4) Manner of Serving Summons.

(a) Except as provided in subrule (B)(4)(b), a summons required under subrule (B)(2) must be served by delivering the summons to the party personally.

(b) If the court finds, on the basis of testimony or a motion and affidavit, that personal service of the summons is impracticable or cannot be

achieved, the court may by ex parte order direct that it be served in any manner reasonably calculated to give notice of the proceedings and an opportunity to be heard, including publication.

(c) If personal service of a summons is not required, the court may direct that it be served in a manner reasonably calculated to provide notice.

(5) Time of Service.

(a) A summons shall be personally served at least:

(i) 14 days before hearing on a petition that seeks to terminate parental rights or a permanency planning hearing,

(ii) 7 days before trial or a child protective dispositional review hearing, or

(iii) 3 days before any other hearing.

(b) If the summons is served by registered mail, it must be sent at least 7 days earlier than subrule (a) requires for personal service of a summons if the party to be served resides in Michigan, or 14 days earlier than required by subrule (a) if the party to be served resides outside Michigan.

(c) If service is by publication, the published notice must appear in a newspaper in the county where the party resides, if known, and, if not, in the county where the action is pending. The published notice need not include the petition itself. The notice must be published at least once 21 days before a hearing specified in subrule (a)(i), 14 days before trial or a hearing specified in subrule (a)(ii), or 7 days before any other hearing.

(C) Notice of Hearing.

(1) General. Notice of a hearing must be given in writing or on the record at least 7 days before the hearing except as provided in subrules (C)(2) and (C)(3), or as otherwise provided in the rules.

(2) Preliminary Hearing; Emergency Removal Hearing.

(a) When a juvenile is detained, notice of the preliminary hearing must be given to the juvenile and to the parent of the juvenile as soon as the hearing is scheduled. The notice may be in person, in writing, on the record, or by telephone.

(b) When a child is placed outside the home, notice of the preliminary hearing or an emergency removal hearing under MCR 3.974(B)(3) must be given to the parent of the child as soon as the hearing is scheduled. The notice may be in person, in writing, on the record, or by telephone.

(3) Permanency Planning Hearing; Termination Proceedings.

(a) Notice of a permanency planning hearing must be given in writing at least 14 days before the hearing.

(b) Notice of a hearing on a petition requesting termination of parental rights in a child protective proceeding must be given in writing at least 14 days before the hearing.

(4) Failure to Appear. When a party fails to appear in response to a notice of hearing, the court may order the party's appearance by summons or subpoena.

(D) Subpoenas.

(1) The attorney for a party or the court on its own motion may cause a subpoena to be served upon a person whose testimony or appearance is desired.

(2) It is not necessary to tender advance fees to the person served a subpoena in order to compel attendance.

(3) Except as otherwise stated in this subrule, service of a subpoena is governed by MCR 2.506.

(E) Waiver of Notice and Service. A person may waive notice of hearing or service of process. The waiver shall be in writing. When a party waives service of a summons required by subrule (B), the party must be provided the advice required by subrule (B)(3).

(F) Subsequent Notices. After a party's first appearance before the court, subsequent notice of proceedings and pleadings shall be served on that party or, if the party has an attorney, on the attorney for the party as provided in subrule (C), except that a summons must be served for trial or termination hearing as provided in subrule (B).

(G) Notice Defects. The appearance and participation of a party at a hearing is a waiver by that party of defects in service with respect to that hearing unless objections regarding the specific defect are placed on the record. If a party appears or participates without an attorney, the court shall advise the party that the appearance and participation waives notice defects and of the party's right to seek an attorney.

(H) Proof of Service.

(1) Summons. Proof of service of a summons must be made in the manner provided in MCR 2.104(A).

(2) Other Papers. Proof of service of other papers permitted or required to be served under these rules must be made in the manner provided in MCR 2.107(D).

(3) Publication. If the manner of service used involves publication, proof of service must be made in the manner provided in MCR 2.106(G)(1), and (G)(3) if the publication is accompanied by a mailing.

(4) Content. The proof of service must identify the papers served. A proof of service for papers served on a foster parent, preadoptive parent, or relative caregiver shall be maintained in the confidential social file as identified in MCR 3.903(A)(3)(b)(vii).

(5) Failure to File. Failure to file proof of service does not affect the validity of the service.

Rule 3.921 Persons Entitled to Notice

(A) Delinquency Proceedings.

(1) General. In a delinquency proceeding, the court shall direct that the following persons be notified of each hearing except as provided in subrule (A)(3):

(a) the juvenile,

(b) the custodial parents, guardian, or legal custodian of the juvenile,

(c) the noncustodial parent who has requested notice at a hearing or in writing,

(d) the guardian ad litem or lawyer-guardian ad litem of a juvenile appointed pursuant to these rules,

(e) the attorney retained or appointed to represent the juvenile, and

(f) the prosecuting attorney.

(2) Notice to the Petitioner. The petitioner must be notified of the first hearing on the petition.

(3) Parent Without Physical Custody. A parent of the minor whose parental rights over the minor have not been terminated at the time the minor comes to court, must be notified of the first hearing on the formal calendar, unless the whereabouts of the parent are unknown.

(B) Protective Proceedings.

(1) General. In a child protective proceeding, except as provided in subrules (B)(2) and (3), the court shall ensure that the following persons are notified of each hearing:

(a) the respondent,

(b) the attorney for the respondent,

(c) the lawyer-guardian ad litem for the child,

(d) subject to subrule (C), the parents, guardian, or legal custodian, if any, other than the respondent,

(e) the petitioner,

(f) a party's guardian ad litem appointed pursuant to these rules, and

(g) the foster parents, preadoptive parents, and relative caregivers of a child in foster care under the responsibility of the state, and

(h) any other person the court may direct to be notified.

(2) Dispositional Review Hearings and Permanency Planning Hearings. Before a dispositional review hearing or a permanency planning hearing, the court shall ensure that the following persons are notified in writing of each hearing:

(a) the agency responsible for the care and supervision of the child,

(b) the person or institution having court-ordered custody of the child,

(c) the parents of the child, subject to subrule (C), and the attorney for the respondent parent, unless parental rights have been terminated,

(d) the guardian or legal custodian of the child, if any,

(e) the guardian ad litem for the child,

(f) the lawyer-guardian ad litem for the child,

(g) the attorneys for each party,

(h) the prosecuting attorney if the prosecuting attorney has appeared in the case,

(i) the child, if 11 years old or older,

(j) any tribal leader, if there is an Indian tribe affiliation, and

(k) the foster parents, preadoptive parents, and relative caregivers of a child in foster care under the responsibility of the state, and

(l) any other person the court may direct to be notified.

(3) Termination of Parental Rights. Written notice of a hearing to determine if the parental rights to a child shall be terminated must be given to those appropriate persons or entities listed in subrule (B)(2).

(C) Putative Fathers. If, at any time during the pendency of a proceeding, the court determines that the minor has no father as defined in MCR 3.903(A)(7), the court may, in its discretion, take appropriate action as described in this subrule.

(1) The court may take initial testimony on the tentative identity and address of the natural father. If the court finds probable cause to believe that an identifiable person is the natural father of the minor, the court shall direct that notice be served on that person in any manner reasonably calculated to provide notice to the putative father, including publication if his whereabouts remain unknown after diligent inquiry. Any notice by publication must not include the name of the putative father. If the court finds that the identity of the natural father is unknown, the court must direct that the unknown father be given notice by publication. The notice must include the following information:

(a) if known, the name of the child, the name of the child's mother, and the date and place of birth of the child;

(b) that a petition has been filed with the court;

(c) the time and place of hearing at which the natural father is to appear to express his interest, if any, in the minor; and

(d) a statement that failure to attend the hearing will constitute a denial of interest in the minor, a waiver of notice for all subsequent hearings, a waiver of a right to appointment of an attorney, and could result in termination of any parental rights.

(2) After notice to the putative father as provided in subrule (C)(1), the court may conduct a hearing and determine, as appropriate, that:

(a) the putative father has been served in a manner that the court finds to be reasonably calculated to provide notice to the putative father.

(b) a preponderance of the evidence establishes that the putative father is the natural father of the minor and justice requires that he be allowed 14 days to establish his relationship according to MCR 3.903(A)(7). The court may extend the time for good cause shown.

(c) there is probable cause to believe that another identifiable person is the natural father of the minor. If so, the court shall proceed with respect to the other person in accord with subrule (C).

(d) after diligent inquiry, the identity of the natural father cannot be determined. If so, the court may proceed without further notice and without appointing an attorney for the unidentified person.

(3) The court may find that the natural father waives all rights to further notice, including the right to notice of termination of parental rights, and the right to an attorney if

(a) he fails to appear after proper notice, or

(b) he appears, but fails to establish paternity within the time set by the court.

(D) Failure to Appear; Notice by Publication. When persons whose whereabouts are unknown fail to appear in response to notice by publication or otherwise, the court need not give further notice by publication of subsequent hearings, except a hearing on the termination of parental rights.

Rule 3.922 Pretrial Procedures in Delinquency and Child Protection Proceedings

(A) Discovery.

(1) The following materials are discoverable as of right in all proceedings provided they are requested no later than 21 days before trial unless the interests of justice otherwise dictate:

(a) all written or recorded statements and notes of statements made by the juvenile or respondent that are in possession or control of petitioner or a law enforcement agency, including oral statements if they have been reduced to writing;

(b) all written or recorded nonconfidential statements made by any person with knowledge of the events in possession or control of petitioner or a law enforcement agency, including police reports;

(c) the names of prospective witnesses;

(d) a list of all prospective exhibits;

(e) a list of all physical or tangible objects that are prospective evidence that are in the possession or control of petitioner or a law enforcement agency;

(f) the results of all scientific, medical, or other expert tests or experiments, including the reports or findings of all experts, that are relevant to the subject matter of the petition;

(g) the results of any lineups or showups, including written reports or lineup sheets; and

(h) all search warrants issued in connection with the matter, including applications for such warrants, affidavits, and returns or inventories.

(2) On motion of a party, the court may permit discovery of any other materials and evidence, including untimely requested materials and evidence that would have been discoverable of right under subrule (A)(1) if timely requested. Absent manifest injustice, no motion for discovery will be granted unless the moving party has requested and has not been provided the materials or evidence sought through an order of discovery.

(3) Depositions may only be taken as authorized by the court.

(4) Failure to comply with subrules (1) and (2) may result in such sanctions, as applicable, as set forth in MCR 2.313.

(B) Notice of Defenses; Rebuttal.

(1) Within 21 days after the juvenile has been given notice of the date of trial, but no later than 7 days before the trial date, the juvenile or the juvenile's attorney must file a written notice with the court and prosecuting attorney of the intent to rely on a defense of alibi or insanity. The notice shall include a list of the names and addresses of defense witnesses.

(2) Within 7 days after receipt of notice, but no later than 2 days before the trial date, the prosecutor shall provide written notice to the court and defense of an intent to offer rebuttal to the above-listed defenses. The notice shall include names and addresses of rebuttal witnesses.

(3) Failure to comply with subrules (1) and (2) may result in the sanctions set forth in MCL 768.21.

(C) Motion Practice. Motion practice in juvenile proceedings is governed by MCR 2.119.

(D) Pretrial Conference. The court may direct the parties to appear at a pretrial conference. The scope and effect of a pretrial conference are governed by MCR 2.401, except as otherwise provided in or inconsistent with the rules of this subchapter.

(E) Notice of Intent.

(1) Within 21 days after the parties have been given notice of the date of trial, but no later than 7 days before the trial date, the proponent must file with the court, and serve all parties, written notice of the intent to:

(a) use a support person, including the identity of the support person, the relationship to the witness, and the anticipated location of the support person during the hearing.

(b) request special arrangements for a closed courtroom or for restricting the view of the respondent/defendant from the witness or other special arrangements allowed under law and ordered by the court.

(c) use a videotaped deposition as permitted by law.

(d) admit out-of-court hearsay statements under MCR 3.972(C)(2), including the identity of the persons to whom a statement was made, the circumstances leading to the statement, and the statement to be admitted.

(2) Within 7 days after receipt or notice, but no later than 2 days before the trial date, the nonproponent parties must provide written notice to the court of an intent to offer rebuttal testimony or evidence in opposition to the request and must include the identity of the witnesses to be called.

(3) The court may shorten the time periods provided in subrule

(E) if good cause is shown.

Rule 3.923 Miscellaneous Procedures

(A) Additional Evidence. If at any time the court believes that the evidence has not been fully developed, it may:

(1) examine a witness,

(2) call a witness, or

(3) adjourn the matter before the court, and

(a) cause service of process on additional witnesses, or

(b) order production of other evidence.

(B) Examination or Evaluation. The court may order that a minor or a parent, guardian, or legal custodian be examined or evaluated by a physician, dentist, psychologist, or psychiatrist.

(C) Fingerprinting and Photographing. A juvenile must be fingerprinted when required by law. The court may permit fingerprinting or photographing, or both, of a minor concerning whom a petition has been filed. Fingerprints and photographs must be placed in the confidential files, capable of being located and destroyed on court order.

(D) Lineup. If a complaint or petition is filed against a juvenile alleging violation of a criminal law or ordinance, the court may, at the request of the prosecuting attorney, order the juvenile to appear at a place and time designated by the court for identification by another person, including a corporeal lineup pursuant to MCL 712A.32. If the court orders the juvenile to appear for such an identification procedure, the court must notify the juvenile and the juvenile's parent, guardian or legal custodian that the juvenile has the right to consult with an attorney and have an attorney present during the identification procedure and that if the juvenile and the juvenile's parent, guardian or legal custodian cannot afford an attorney, the court will appoint an attorney for the juvenile if requested on the record or in writing by the juvenile or the juvenile's parent, guardian or legal custodian.

(E) Electronic Equipment; Support Person. The court may allow the use of closed-circuit television, speaker telephone, or other similar electronic equipment to facilitate hearings or to protect the parties. The court may allow the use of videotaped statements and depositions, anatomical dolls, or support persons, and may take other measures to protect the child witness as authorized by MCL 712A.17b.

(F) Impartial Questioner. The court may appoint an impartial person to address questions to a child witness at a hearing as the court directs.

(G) Adjournments. Adjournments of trials or hearings in child protective proceedings should be granted only

(1) for good cause,

(2) after taking into consideration the best interests of the child, and

(3) for as short a period of time as necessary.

Rule 3.924 Information Furnished on Request by Court

Persons or agencies providing testimony, reports, or other information at the request of the court, including otherwise confidential information, records, or reports that are relevant and material to the proceedings following authorization of a petition, are immune from any subsequent legal action with respect to furnishing the information to the court.

Rule 3.925 Open Proceedings; Judgments and Orders; Records Confidentiality; Destruction of Court Files; Setting Aside Adjudications

(A) Open Proceedings.

(1) General. Except as provided in subrule (A)(2), juvenile proceedings on the formal calendar and preliminary hearings shall be open to the public.

(2) Closed Proceedings; Criteria. The court, on motion of a party or a victim, may close the proceedings to the public during the testimony of a child or during the testimony of the victim to protect the welfare of either. In making such a determination, the court shall consider the nature of the proceedings; the age, maturity, and preference of the witness; and, if the witness is a child, the preference of a parent, guardian, or legal custodian that the proceedings be open or closed. The court may not close the proceedings to the public during the testimony of the juvenile if jurisdiction is requested under MCL 712A.2(a)(1).

(B) Record of Proceedings. A record of all hearings must be made. All proceedings on the formal calendar must be recorded by stenographic recording or by mechanical or electronic recording as provided by statute or MCR 8.108. A plea of admission or no contest, including any agreement with or objection to the plea, must be recorded.

(C) Judgments and Orders. The form and signing of judgments are governed by MCR 2.602(A)(1) and (2). Judgments and orders may be served on a person by first-class mail to the person's last known address.

(D) Public Access to Records; Confidential File.

(1) General. Records of the juvenile cases, other than confidential files, must be open to the general public.

(2) Confidential Files. Only persons who are found by the court to have a legitimate interest may be allowed access to the confidential files. In determining whether a person has a legitimate interest, the court shall consider the nature of the proceedings, the welfare and safety of the public, the interest of the minor, and any restriction imposed by state or federal law.

(E) Destruction of Court Files and Records. This subrule governs the destruction of court files and records.

(1) Destruction Generally; Effect. The court may at any time for good cause destroy its own files and records pertaining to an offense by or against a minor, other than an adjudicated offense described in MCL 712A.18e(2), except that the register of actions must not be destroyed. Destruction of a file does not negate, rescind, or set aside an adjudication.

(2) Delinquency Files and Records.

(a) The court must destroy the diversion record of a juvenile within 28 days after the juvenile becomes 17 years of age.

(b) The court must destroy all files of matters heard on the consent calendar within 28 days after the juvenile becomes 17 years of age or after dismissal from court supervision, whichever is later, unless the juvenile subsequently comes within the jurisdiction of the court on the formal calendar. If the case is transferred to the consent calendar and a register of actions exists, the register of actions must be maintained as a nonpublic record.

(c) Except as provided by subrules (a) and (b), the court must destroy the files and records pertaining to a person's juvenile offenses when the person becomes 30 years old.

(d) If the court destroys its files regarding a juvenile proceeding on the formal calendar, it shall retain the register of actions, and, if the information is not included in the register of actions, whether the juvenile was represented by an attorney or waived representation.

(3) Child Protective Files and Records.

(a) The court, for any reason, may destroy child protective proceeding files and records pertaining to a child, other than orders terminating parental rights, 25 years after the jurisdiction over the child ends, except that where records on more than one child in a family are retained in the same file, destruction is not allowed until 25 years after jurisdiction over the last child ends.

(b) All orders terminating parental rights to a child must be kept as a permanent record of the court.

(F) Setting Aside Adjudications and Convictions.

(1) Adjudications. The setting aside of juvenile adjudications is governed by MCL 712A.18e.

(2) Convictions. The court may only set aside a conviction as provided by MCL 780.621 *et seq.*

(G) Access to Juvenile Offense Record of Convicted Adults. When the juvenile offense record of an adult convicted of a crime is made available to the appropriate agency, as provided in MCL 791.228(1), the record must state whether, with regard to each adjudication, the juvenile had an attorney or voluntarily waived an attorney.

Rule 3.926 Transfer of Jurisdiction; Change of Venue

(A) Definition. As used in MCL 712A.2, a child is "found within the county" in which the offense against the child occurred, in which the offense committed by the juvenile occurred, or in which the minor is physically present.

(B) Transfer to County of Residence. When a minor is brought before the family division of the circuit court in a county other than that in which the minor resides, the court may transfer the case to the court in the county of residence before trial.

(1) If both parents reside in the same county, or if the child resides in the county with a parent who has been awarded legal custody, a guardian, a legal custodian, or the child's sole legal parent, that county will be presumed to be the county of residence.

(2) In circumstances other than those enumerated in subsection (1) of this section, the court shall consider the following factors in determining the child's county of residence:

(a) The county of residence of the parent or parents, guardian, or legal custodian.

(b) Whether the child has ever lived in the county, and, if so, for how long.

(c) Whether either parent has moved to another county since the inception of the case.

(d) Whether the child is subject to the prior continuing jurisdiction of another court.

(e) Whether a court has entered an order placing the child in the county for the purpose of adoption.

(f) Whether the child has expressed an intention to reside in the county.

(g) Any other factor the court considers relevant.

(3) If the child has been placed in a county by court order or by placement by a public or private agency, the child shall not be considered a resident of the county in which he or she has been placed, unless the child has been placed for the purpose of adoption.

(C) Costs. When a court other than the court in a county in which the minor resides orders disposition, it will be responsible for any costs incurred in connection with such order unless

(1) the court in the county in which the minor resides agrees to pay the costs of such disposition, or

(2) the minor is made a state ward pursuant to the Youth Rehabilitation Services Act, MCL 803.301 *et seq*., and the county of residence withholds consent to a transfer of the case.

(D) Change of Venue; Grounds. The court, on motion by a party, may order a case to be heard before a court in another county:

(1) for the convenience of the parties and witnesses, provided that a judge of the other court agrees to hear the case; or

(2) when an impartial trial cannot be had where the case is pending.

All costs of the proceeding in another county are to be borne by the court ordering the change of venue.

(E) Bifurcated Proceeding. If the judge of the transferring court and the judge of the receiving court agree, the case may be bifurcated to permit adjudication in the transferring court and disposition in the receiving court. The case may be returned to the receiving court immediately after the transferring court enters its order of adjudication.

(F) Transfer of Records. The court entering an order of transfer or change of venue shall send the original pleadings and documents, or certified copies of the pleadings and documents, to the receiving court without charge. Where the courts have agreed to bifurcate the proceedings, the court adjudicating the case shall send any supplemented pleadings and records or certified copies of the supplemented pleadings and records to the court entering the disposition in the case.

(G) Designated Cases. Designated cases are to be filed in the county in which the offense is alleged to have occurred. Other than a change of venue for the purpose of trial, a designated case may not be transferred to any other county, except, after conviction, a designated case may be transferred to the juvenile's county of residence for entry of a juvenile disposition only. Sentencing of a juvenile, including delayed imposition of sentence, may only be done in the county in which the offense occurred.

Rule 3.927 Prior Court Orders

In a juvenile proceeding involving a minor who is subject to a prior order of another Michigan court, the manner of notice to the other court and the authority of the family division of the circuit court to proceed are governed by MCR 3.205.

Rule 3.928 Contempt of Court

(A) Power. The court has the authority to hold persons in contempt of court as provided by MCL 600.1701 and 712A.26. A parent, guardian, or legal custodian of a

juvenile who is within the court's jurisdiction and who fails to attend a hearing as required is subject to the contempt power as provided in MCL 712A.6a.

(B) Procedure. Contempt of court proceedings are governed by MCL 600.1711, 600.1715, and MCR 3.606. MCR 3.982-3.989 govern proceedings against a minor for contempt of a minor personal protection order.

(C) Contempt by Juvenile. A juvenile under court jurisdiction who is convicted of criminal contempt of court, and who was at least 17 years of age when the contempt was committed, may be sentenced to up to 30 days in the county jail as a disposition for the contempt. Juveniles sentenced under this subrule need not be lodged separate and apart from adult prisoners. Younger juveniles found in contempt of court are subject to a juvenile disposition under these rules.

Rule 3.929 Use of Facsimile Communication Equipment

The parties may file records, as defined in MCR 3.903(A)(24), by the use of facsimile communication equipment. Filing of records by the use of facsimile communication equipment in juvenile proceedings is governed by MCR 2.406.

Rule 3.930 Receipt and Return or Disposal of Exhibits in Juvenile Proceedings

(A) Receipt of Exhibits. Exhibits introduced into evidence at or during court proceedings shall be received and maintained as provided by the Michigan Supreme Court Case File Management Standards.

(B) Return or Disposal of Exhibits. At the conclusion of a trial or hearing, exhibits may be retrieved by the parties who submitted them except that any weapons and drugs shall be returned to the confiscating agency for proper disposition. If the exhibits are not retrieved by the parties within 56 days after conclusion of the trial or hearing, the court may properly dispose of the exhibits without notice to the parties.

(C) Confidentiality. If the court retains an exhibit after a hearing or trial and the exhibit is confidential as provided by MCR 3.903(A)(3), the court must continue to maintain the exhibit in a confidential manner.

Rule 3.931 Initiating Delinquency Proceedings

(A) Commencement of Proceeding. Any request for court action against a juvenile must be by written petition.

(B) Content of Petition. A petition must contain the following information:

(1) the juvenile's name, address, and date of birth, if known;

(2) the names and addresses, if known, of

(a) the juvenile's mother and father,

(b) the guardian, legal custodian, or person having custody of the juvenile, if other than a mother or father,

(c) the nearest known relative of the juvenile, if no parent, guardian, or legal custodian can be found, and

(d) any court with prior continuing jurisdiction;

(3) sufficient allegations that, if true, would constitute an offense by the juvenile;

(4) a citation to the section of the Juvenile Code relied upon for jurisdiction;

(5) a citation to the federal, state, or local law or ordinance allegedly violated by the juvenile;

(6) the court action requested;

(7) if applicable, the notice required by MCL 257.732(7), and the juvenile's Michigan driver's license number; and

(8) information required by MCR 3.206(A)(4), identifying whether a family division matter involving members of the same family is or was pending.

(C) Citation or Appearance Ticket.

(1) A citation or appearance ticket may be used to initiate a delinquency proceeding if the charges against the juvenile are limited to:

(a) violations of the Michigan Vehicle Code, or of a provision of an ordinance substantially corresponding to any provision of that law, as provided by MCL 712A.2b.

(b) offenses that, if committed by an adult, would be appropriate for use of an appearance ticket under MCL 764.9c.

(2) The citation or appearance ticket shall be treated by the court as if it were a petition, except that it may not serve as a basis for pretrial detention.

(D) Motor Vehicle Violations; Failure to Appear. If the juvenile is a Michigan resident and fails to appear or otherwise to respond to any matter pending relative to a motor vehicle violation, the court

(1) must initiate the procedure required by MCL 257.321a for the failure to answer a citation, and

(2) may issue an order to apprehend the juvenile after a petition is filed with the court.

Rule 3.932 Summary Initial Proceedings

(A) Preliminary Inquiry. When a petition is not accompanied by a request for detention of the juvenile, the court may conduct a preliminary inquiry. Except in cases involving offenses enumerated in the Crime Victim's Rights Act, MCL 780.781(1)(f), the preliminary inquiry need not be conducted on the record. The court may, in the interest of the juvenile and the public:

(1) deny authorization of the petition;

(2) refer the matter to a public or private agency providing available services pursuant to the Juvenile Diversion Act, MCL 722.821 *et seq*.;

(3) direct that the juvenile and the parent, guardian, or legal custodian be notified to appear for further informal inquiry on the petition;

(4) proceed on the consent calendar as provided in subrule (C); or

(5) place the matter on the formal calendar as provided in subrule (D).

(B) Offenses Listed in the Crime Victim's Rights Act. A case involving the alleged commission of an offense listed in the Crime Victim's Rights Act, MCL 780.781(1)(f), may only be removed from the adjudicative process upon compliance with the procedures set forth in that act. See MCL 780.786b.

(C) Consent Calendar. If the court receives a petition, citation, or appearance ticket, and it appears that protective and supportive action by the court will serve the best interests of the juvenile and the public, the court may proceed on the consent calendar without authorizing a petition to be filed. No case may be placed on the consent calendar unless the juvenile and the parent, guardian, or legal custodian agree to have the case placed on the consent calendar. The court may transfer a case from the formal calendar to the consent calendar at any time before disposition.

(1) Notice. Formal notice is not required for cases placed on the consent calendar except as required by article 2 of the Crime Victim's Rights Act, MCL 780.781 *et seq.*

(2) Plea; Adjudication. No formal plea may be entered in a consent calendar case, and the court must not enter an adjudication.

(3) Conference. The court shall conduct a consent calendar conference with the juvenile and the parent, guardian, or legal custodian to discuss the allegations. The victim may, but need not, be present.

(4) Case Plan. If it appears to the court that the juvenile has engaged in conduct that would subject the juvenile to the jurisdiction of the court, the court may issue a written consent calendar case plan.

(5) Custody. A consent calendar case plan must not contain a provision removing the juvenile from the custody of the parent, guardian, or legal custodian.

(6) Disposition. No order of disposition may be entered by the court in a case placed on the consent calendar.

(7) Closure. Upon successful completion by the juvenile of the consent calendar case plan, the court shall close the case and may destroy all records of the proceeding. No report or abstract may be made to any other agency nor may the court require the juvenile to be fingerprinted for a case completed and closed on the consent calendar.

(8) Transfer to Formal Calendar. If it appears to the court at any time that the proceeding on the consent calendar is not in the best interest of either the juvenile or the public, the court may, without hearing, transfer the case from the consent calendar to the formal calendar on the charges contained in the original petition, citation, or appearance ticket. Statements made by the

juvenile during the proceeding on the consent calendar may not be used against the juvenile at a trial on the formal calendar on the same charge.

(D) Formal Calendar. The court may authorize a petition to be filed and docketed on the formal calendar if it appears to the court that formal court action is in the best interest of the juvenile and the public. The court shall not authorize an original petition under MCL 712A.2(a)(1), unless the prosecuting attorney has approved submitting the petition to the court. At any time before disposition, the court may transfer the matter to the consent calendar.

Rule 3.933 Acquiring Physical Control of Juvenile

(A) Custody Without Court Order. When an officer apprehends a juvenile for an offense without a court order and does not warn and release the juvenile, does not refer the juvenile to a diversion program, and does not have authorization from the prosecuting attorney to file a complaint and warrant charging the juvenile with an offense as though an adult pursuant to MCL 764.1f, the officer may:

(1) issue a citation or ticket to appear at a date and time to be set by the court and release the juvenile;

(2) accept a written promise of the parent, guardian, or legal custodian to bring the juvenile to court, if requested, at a date and time to be set by the court, and release the juvenile to the parent, guardian, or legal custodian; or

(3) take the juvenile into custody and submit a petition, if:

(a) the officer has reason to believe that because of the nature of the offense, the interest of the juvenile or the interest of the public would not be protected by release of the juvenile, or

(b) a parent, guardian, or legal custodian cannot be located or has refused to take custody of the juvenile.

(B) Custody With Court Order. When a petition is presented to the court, and probable cause exists to believe that a juvenile has committed an offense, the court may issue an order to apprehend the juvenile. The order may include authorization to

(1) enter specified premises as required to bring the juvenile before the court, and

(2) detain the juvenile pending preliminary hearing.

(C) Notification of Court. The officer who apprehends a juvenile must immediately contact the court when:

(1) the officer detains the juvenile,

(2) the officer is unable to reach a parent, guardian, or legal custodian who will appear promptly to accept custody of the juvenile, or

(3) the parent, guardian, or legal custodian will not agree to bring the juvenile to court as provided in subrule (A)(2).

(D) Separate Custody of Juvenile. While awaiting arrival of the parent, guardian, or legal custodian, appearance before the court, or otherwise, the juvenile must be maintained separately from adult prisoners to prevent any verbal, visual, or physical contact with an adult prisoner.

Rule 3.934 Arranging Court Appearance; Detained Juvenile

(A) General. Unless the prosecuting attorney has authorized a complaint and warrant charging the juvenile with an offense as though an adult pursuant to MCL 764.1f, when a juvenile is apprehended and not released, the officer shall:

(1) forthwith take the juvenile

(a) before the court for a preliminary hearing, or

(b) to a place designated by the court pending the scheduling of a preliminary hearing;

(2) ensure that the petition is prepared and presented to the court;

(3) notify the parent, guardian, or legal custodian of the detaining of the juvenile and of the need for the presence of the parent, guardian, or legal custodian at the preliminary hearing;

(4) prepare a custody statement for submission to the court including:

(a) the grounds for and the time and location of detention, and

(b) the names of persons notified and the times of notification, or the reason for failure to notify.

(B) Temporary Detention; Court Not Open.

(1) Grounds. A juvenile apprehended without court order when the court is not open may be detained pending preliminary hearing if the offense or the juvenile meets a circumstance set forth in MCR 3.935(D)(1), or if no parent, guardian, or legal custodian can be located.

(2) Designated Court Person. The court must designate a judge, referee, or other person who may be contacted by the officer taking a juvenile into custody when the court is not open. In each county there must be a designated facility open at all times at which an officer may obtain the name of the person to be contacted for permission to detain the juvenile pending preliminary hearing.

Rule 3.935 Preliminary Hearing

(A) Time.

(1) Commencement. The preliminary hearing must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays, as defined by MCR 8.110(D)(2), or the juvenile must be released.

(2) General Adjournment. The court may adjourn the hearing for up to 14 days:

(a) to secure the attendance of the juvenile's parent, guardian, or legal custodian or of a witness, or

(b) for other good cause shown.

(3) Special Adjournment; Specified Juvenile Violation. This subrule applies to a juvenile accused of an offense that allegedly was committed between the juvenile's 14th and 17th birthdays and that would constitute a specified juvenile violation listed in MCL 712A.2(a)(1).

(a) On a request of a prosecuting attorney who has approved the submission of a petition with the court, conditioned on the opportunity to withdraw it within 5 days if the prosecuting attorney authorizes the filing of a complaint and warrant with a magistrate, the court shall comply with subrules (i)-(iii).

(i) The court shall adjourn the preliminary hearing for up to 5 days to give the prosecuting attorney the opportunity to determine whether to authorize the filing of a criminal complaint and warrant charging the juvenile with an offense as though an adult pursuant to MCL 764.1f, instead of unconditionally approving the filing of a petition with the court.

(ii) The court, during the special adjournment under subrule 3(a), must defer a decision regarding whether to authorize the filing of the petition.

(iii) The court, during the special adjournment under subrule (3)(a), must release the juvenile pursuant to MCR 3.935(E) or detain the juvenile pursuant to MCR 3.935(D).

(b) If, at the resumption of the preliminary hearing following special adjournment, the prosecuting attorney has not authorized the filing with a magistrate of a criminal complaint and warrant on the charge concerning the juvenile, approval of the petition by the prosecuting attorney shall no longer be deemed conditional and the court shall proceed with the preliminary hearing and decide whether to authorize the petition to be filed.

(c) This rule does not preclude the prosecuting attorney from moving for a waiver of jurisdiction over the juvenile under MCR 3.950.

(B) Procedure.

(1) The court shall determine whether the parent, guardian, or legal custodian has been notified and is present. The preliminary hearing may be conducted without a parent, guardian, or legal custodian present, provided a guardian ad litem or attorney appears with the juvenile.

(2) The court shall read the allegations in the petition.

(3) The court shall determine whether the petition should be dismissed, whether the matter should be referred to alternate services pursuant to the Juvenile Diversion Act, MCL 722.821 *et seq*., whether the matter should be heard on the consent calendar as provided by MCR 3.932(C), or whether to continue the preliminary hearing.

(4) If the hearing is to continue, the court shall advise the juvenile on the record in plain language of:

(a) the right to an attorney pursuant to MCR 3.915(A)(1);

(b) the right to trial by judge or jury on the allegations in the petition and that a referee may be assigned to hear the case unless demand for a jury or judge is filed pursuant to MCR 3.911 or 3.912; and

(c) the privilege against self-incrimination and that any statement by the juvenile may be used against the juvenile.

(5) If the charge is a violation of MCL 712A.2(a)(2)-(4) or (d), the court must inquire if the juvenile or a parent is a member of any American Indian tribe or band. If the juvenile is a member, or if a parent is a tribal member and the juvenile is eligible for membership in the tribe, the court must determine the identity of the tribe or band and follow the procedures set forth in MCR 3.980.

(6) The juvenile must be allowed an opportunity to deny or otherwise plead to the allegations.

(7) Unless the preliminary hearing is adjourned, the court must decide whether to authorize the petition to be filed pursuant to MCR 3.932(D). If it authorizes the filing of the petition, the court must:

(a) determine if fingerprints must be taken as provided by MCL 712A.11(5) and MCR 3.936; and

(b) determine if the juvenile should be released, with or without conditions, or detained, as provided in subrules (C)-(F).

(8) The juvenile may be detained pending the completion of the preliminary hearing if the conditions for detention under subrule (D) are established.

(C) Determination Whether to Release or Detain.

(1) Factors. In determining whether the juvenile is to be released, with or without conditions, or detained, the court shall consider the following factors:

(a) the juvenile's family ties and relationships,

(b) the juvenile's prior delinquency record,

(c) the juvenile's record of appearance or nonappearance at court proceedings,

(d) the violent nature of the alleged offense,

(e) the juvenile's prior history of committing acts that resulted in bodily injury to others,

(f) the juvenile's character and mental condition,

(g) the court's ability to supervise the juvenile if placed with a parent or relative, and

(h) any other factor indicating the juvenile's ties to the community, the risk of nonappearance, and the danger to the juvenile or the public if the juvenile is released.

(2) Findings. The court must state the reasons for its decision to grant or deny release on the record or in a written memorandum. The court's statement need not include a finding on each of the enumerated factors.

(D) Detention.

(1) Conditions for Detention. A juvenile may be ordered detained or continued in detention if the court finds probable cause to believe the juvenile committed the offense, and that one or more of the following circumstances are present:

(a) the offense alleged is so serious that release would endanger the public safety;

(b) the juvenile is charged with an offense that would be a felony if committed by an adult and will likely commit another offense pending trial, if released, and

(i) another petition is pending against the juvenile,

(ii) the juvenile is on probation, or

(iii) the juvenile has a prior adjudication, but is not under the court's jurisdiction at the time of apprehension;

(c) there is a substantial likelihood that if the juvenile is released to the parent, guardian, or legal custodian, with or without conditions, the juvenile will fail to appear at the next court proceeding;

(d) the home conditions of the juvenile make detention necessary;

(e) the juvenile has run away from home;

(f) the juvenile has failed to remain in a detention facility or nonsecure facility or placement in violation of a valid court order; or

(g) pretrial detention is otherwise specifically authorized by law.

(2) Waiver. A juvenile may waive the probable cause determination required by subrule (1) only if the juvenile is represented by an attorney.

(3) Evidence; Findings. The juvenile may contest the sufficiency of evidence by cross-examination of witnesses, presentation of defense witnesses, or by other evidence. The court shall permit the use of subpoena power to secure attendance of defense witnesses. The Michigan Rules of Evidence do not apply, other than those with respect to privileges.

(4) Type of Detention. The detained juvenile must be placed in the least restrictive environment that will meet the needs of the juvenile and the public, and that will conform to the requirements of MCL 712A.15 and 712A.16.

(E) Release; Conditions.

(1) The court may release a juvenile to a parent pending the resumption of the preliminary hearing, pending trial, or until further order without conditions, or, if the court determines that release with conditions is necessary to reasonably ensure the appearance of the juvenile as required or to reasonably ensure the safety of the public, the court may, in its discretion, order that the release of the juvenile be on the condition or combination of conditions that the court determines to be appropriate, including, but not limited to:

(a) that the juvenile will not commit any offense while released,

(b) that the juvenile will not use alcohol or any controlled substance or tobacco product,

(c) that the juvenile will participate in a substance abuse assessment, testing, or treatment program,

(d) that the juvenile will participate in a treatment program for a physical or mental condition,

(e) that the juvenile will comply with restrictions on personal associations or place of residence,

(f) that the juvenile will comply with a specified curfew,

(g) that the juvenile will maintain appropriate behavior and attendance at an educational program, and

(h) that the juvenile's driver's license or passport will be surrendered.

(2) Violation of Conditions of Release. If a juvenile is alleged to have violated the conditions set by the court, the court may order the juvenile apprehended and detained immediately. The court may then modify the conditions or revoke the juvenile's release status after providing the juvenile an opportunity to be heard on the issue of the violation of conditions of release.

(F) Bail. In addition to any other conditions of release, the court may require a parent, guardian, or legal custodian to post bail.

(1) Cash or Surety Bond. The court may require a parent, guardian, or legal custodian to post a surety bond or cash in the full amount of the bail, at the option of the parent, guardian, or legal custodian. A surety bond must be written by a person or company licensed to write surety bonds in Michigan. Except as otherwise provided by this rule, MCR 3.604 applies to bonds posted under this rule.

(2) Option to Deposit Cash or 10 Percent of Bail. Unless the court requires a surety bond or cash in the full amount of the bail as provided in subrule (F)(1), the court shall advise the parent, guardian, or legal custodian of the option to satisfy the monetary requirement of bail by:

(a) posting either cash or a surety bond in the full amount of bail set by the court or a surety bond written by a person or company licensed to write surety bonds in Michigan, or

(b) depositing with the register, clerk, or cashier of the court currency equal to 10 percent of the bail, but at least $10.

(3) Revocation or Modification. The court may modify or revoke the bail for good cause after providing the parties notice and an opportunity to be heard.

(4) Return of Bail. If the conditions of bail are met, the court shall discharge any surety.

(a) If disposition imposes reimbursement or costs, the bail money posted by the parent must first be applied to the amount of reimbursement and costs, and the balance, if any, returned.

(b) If the juvenile is discharged from all obligations in the case, the court shall return the cash posted, or return 90 percent and retain 10 percent if the amount posted represented 10 percent of the bail.

(5) Forfeiture. If the conditions of bail are not met, the court may issue a writ for the apprehension of the juvenile and enter an order declaring the bail money, if any, forfeited.

(a) The court must immediately mail notice of the forfeiture order to the parent at the last known address and to any surety.

(b) If the juvenile does not appear and surrender to the court within 28 days from the forfeiture date, or does not within the period satisfy the court that the juvenile is not at fault, the court may enter judgment against the parent and surety, if any, for the entire amount of the bail and, when allowed, costs of the court proceedings.

Rule 3.936 Fingerprinting

(A) General. The court must permit fingerprinting of a juvenile pursuant to MCL 712A.11(5) and 712A.18(10), and as provided in this rule. Notice of fingerprinting retained by the court is confidential.

(B) Order for Fingerprints. At the time that the court authorizes the filing of a petition alleging a juvenile offense and before the court enters an order of disposition on a juvenile offense, the court shall examine the confidential files and verify that the juvenile has been fingerprinted. If it appears to the court that the juvenile has not been fingerprinted, the court must:

(1) direct the juvenile to go to the law enforcement agency involved in the apprehension of the juvenile, or to the sheriff's department, so fingerprints may be taken; or

(2) issue an order to the sheriff's department to apprehend the juvenile and to take the fingerprints of the juvenile.

(C) Notice of Disposition. The court shall notify the Department of State Police in writing:

(1) of any juvenile who had been fingerprinted for a juvenile offense and who was found not to be within the jurisdiction of the court under MCL 712A.2(a)(1); or

(2) that the court took jurisdiction of a juvenile under MCL 712A.2(a)(1), who was fingerprinted for a juvenile offense, specifying the offense, the method of adjudication, and the disposition ordered.

(D) Order for Return of Fingerprints. When a juvenile has been fingerprinted for a juvenile offense, but no petition on the offense is submitted to the court, the court does not authorize the petition, or the court does not take jurisdiction of the juvenile under MCL 712A.2(a)(1), if the records have not been destroyed as provided by MCL 28.243(7)-(8), the court, on motion filed pursuant to MCL 28.243(8), shall:

(1) issue an order directing the Department of State Police, or other official holding the information, to return the fingerprints, arrest card, and description of the juvenile pertaining to the offense, other than an offense as listed in MCL 28.243(12); and

(2) direct that fingerprint information in the court file pertaining to the offense be destroyed.

Rule 3.939 Case Transferred From District Court Pursuant to Subchapter 6.900

(A) General Procedure. Except as provided in subrule (B), the court shall hear and dispose of a case transferred pursuant to MCL 766.14 in the same manner as if the case had been commenced in the family division of circuit court. A petition that has been approved by the prosecuting attorney must be submitted to the court.

(B) Probable Cause Finding of Magistrate. The court may use the probable cause finding of the magistrate made at the preliminary examination to satisfy the probable cause requirement of MCR 3.935(D)(1).

Rule 3.941 Pleas of Admission or No Contest

(A) Capacity. A juvenile may offer a plea of admission or of no contest to an offense with the consent of the court. The court shall not accept a plea to an offense unless the court is satisfied that the plea is accurate, voluntary, and understanding.

(B) Conditional Pleas. The court may accept a plea of admission or of no contest conditioned on preservation of an issue for appellate review.

(C) Plea Procedure. Before accepting a plea of admission or of no contest, the court must personally address the juvenile and must comply with subrules (1)-(4).

(1) An Understanding Plea. The court shall tell the juvenile:

(a) the name of the offense charged,

(b) the possible dispositions,

(c) that if the plea is accepted, the juvenile will not have a trial of any kind, so the juvenile gives up the rights that would be present at trial, including the right:

(i) to trial by jury,

(ii) to trial by the judge if the juvenile does not want trial by jury,

(iii) to be presumed innocent until proven guilty,

(iv) to have the petitioner or prosecutor prove guilt beyond a reasonable doubt,

(v) to have witnesses against the juvenile appear at the trial,

(vi) to question the witnesses against the juvenile,

(vii) to have the court order any witnesses for the juvenile's defense to appear at the trial,

(viii) to remain silent and not have that silence used against the juvenile, and

(ix) to testify at trial, if the juvenile wants to testify.

(2) A Voluntary Plea.

(a) The court shall confirm any plea agreement on the record.

(b) The court shall ask the juvenile if any promises have been made beyond those in a plea agreement or whether anyone has threatened the juvenile.

(3) An Accurate Plea. The court may not accept a plea of admission or of no contest without establishing support for a finding that the juvenile committed the offense:

(a) either by questioning the juvenile or by other means when the plea is a plea of admission, or

(b) by means other than questioning the juvenile when the juvenile pleads no contest. The court shall also state why a plea of no contest is appropriate.

(4) Support for Plea. The court shall inquire of the parent, guardian, legal custodian, or guardian ad litem, if present, whether there is any reason why the court should not accept the plea tendered by the juvenile.

(D) Plea Withdrawal. The court may take a plea of admission or of no contest under advisement. Before the court accepts the plea, the juvenile may withdraw the plea offer by right. After the court accepts the plea, the court has discretion to allow the juvenile to withdraw a plea.

Rule 3.942 Trial

(A) Time. In all cases the trial must be held within 6 months after the filing of the petition, unless adjourned for good cause. If the juvenile is detained, the trial has not started within 63 days after the juvenile is taken into custody, and the delay in starting the trial is not attributable to the defense, the court shall forthwith order the juvenile released pending trial without requiring that bail be posted, unless the juvenile is being detained on another matter.

(B) Preliminary Matters.

(1) The court shall determine whether all parties are present.

(a) The juvenile has the right to be present at the trial with an attorney, parent, guardian, legal custodian, or guardian ad litem, if any.

(b) The court may proceed in the absence of a parent, guardian, or legal custodian who was properly notified to appear.

(c) The victim has the right to be present at trial as provided by MCL 780.789.

(2) The court shall read the allegations contained in the petition, unless waived.

(3) The court shall inform the juvenile of the right to the assistance of an attorney pursuant to MCR 3.915 unless an attorney appears representing the juvenile. If the juvenile requests to proceed without the assistance of an attorney, the court must advise the juvenile of the dangers and disadvantages of self-representation and make sure the juvenile is literate and competent to conduct the defense.

(C) Evidence; Standard of Proof. The Michigan Rules of Evidence and the standard of proof beyond a reasonable doubt apply at trial.

(D) Verdict. In a delinquency proceeding, the verdict must be guilty or not guilty of either the offense charged or a lesser included offense.

Rule 3.943 Dispositional Hearing

(A) General. A dispositional hearing is conducted to determine what measures the court will take with respect to a juvenile and, when applicable, any other person, once the court has determined following trial or plea that the juvenile has committed an offense.

(B) Time. The interval between the plea of admission or trial and disposition, if any, is within the court's discretion. When the juvenile is detained, the interval may not be more than 35 days, except for good cause.

(C) Evidence.

(1) The Michigan Rules of Evidence, other than those with respect to privileges, do not apply at dispositional hearings. All relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though such evidence may not be admissible at trial.

(2) The juvenile, or the juvenile's attorney, and the petitioner shall be afforded an opportunity to examine and controvert written reports so received and, in the court's discretion, may be allowed to cross-examine individuals making reports when those individuals are reasonably available.

(3) No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at a dispositional hearing, of materials prepared pursuant to a court-ordered examination, interview, or course of treatment.

(D) Presence of Juvenile and Victim.

(1) The juvenile may be excused from part of the dispositional hearing for good cause shown, but must be present when the disposition is announced.

(2) The victim has the right to be present at the dispositional hearing and to make an impact statement as provided by the Crime Victim's Rights Act, MCL 780.751 *et seq.*

(E) Dispositions.

(1) If the juvenile has been found to have committed an offense, the court may enter an order of disposition as provided by MCL 712A.18.

(2) In making second and subsequent dispositions in delinquency cases, the court must consider imposing increasingly severe sanctions, which may include imposing additional conditions of probation; extending the term of probation; imposing additional costs; ordering a juvenile who has been residing at home into an out-of-home placement; ordering a more restrictive placement; ordering state wardship for a child who has not previously been a state ward; or any other conditions deemed appropriate by the court. Waiver of jurisdiction to adult criminal court, either by authorization of a warrant or by judicial waiver, is not considered a sanction for the purpose of this rule.

(3) Before a juvenile is placed in an institution outside the state of Michigan as a disposition, the court must find that:

(a) institutional care is in the best interests of the juvenile,

(b) equivalent facilities to meet the juvenile's needs are not available within Michigan, and

(c) the placement will not cause undue hardship.

(4) The court shall not enter an order of disposition for a juvenile offense until the court verifies that the juvenile has been fingerprinted. If the juvenile has not been fingerprinted, the court shall proceed as provided by MCR 3.936.

(5) If the court enters an order pursuant to the Crime Victim's Rights Act, MCL 780.751 *et seq.*, the court shall only order the payment of one assessment at any dispositional hearing, regardless of the number of offenses.

(6) The court shall prepare and forward to the Secretary of State an abstract of its findings at such times and for such offenses as are required by law.

(7) Mandatory Detention for Use of a Firearm.

(a) In addition to any other disposition, a juvenile, other than a juvenile sentenced in the same manner as an adult under MCL 712A.18(1)(n), shall be committed under MCL 712A.18(1)(e) to a detention facility for a specified period of time if all the following circumstances exist:

(i) the juvenile is under the jurisdiction of the court under MCL 712A.2(a)(1),

(ii) the juvenile was found to have violated a law of this state or of the United States or a criminal municipal ordinance, and

(iii) the juvenile was found to have used a firearm during the offense.

(b) The length of the commitment to a detention facility shall not exceed the length of the sentence that could have been imposed if the juvenile had been sentenced as an adult.

(c) "Firearm" means any weapon from which a dangerous projectile may be propelled by using explosives, gas, or air as a means of propulsion, except any smoothbore rifle or hand gun designed and manufactured exclusively for propelling BB's not exceeding .177 caliber by means of spring, gas, or air.

Rule 3.944 Probation Violation

(A) Petition; Temporary Custody.

(1) Upon receipt of a sworn supplemental petition alleging that the juvenile has violated any condition of probation, the court may:

(a) direct that the juvenile be notified pursuant to MCR 3.920 to appear for a hearing on the alleged violation, which notice must include a copy of the probation violation petition and a notice of the juvenile's rights as provided in subrule (C)(1); or

(b) order that the juvenile be apprehended and brought to the court for a detention hearing, which must be commenced within 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays as defined in MCR 8.110 (D)(2).

(2) When a juvenile is apprehended pursuant to court order as provided in subrule (A)(1)(b), the officer must:

(a) forthwith take the juvenile

(i) to the court for a detention hearing, or

(ii) to the place designated by the court pending the scheduling of a detention hearing; and

(b) notify the custodial parent, guardian, or legal custodian that the juvenile has been taken into custody, of the time and place of the detention hearing, if known, and of the need for the presence of the parent, guardian, or legal custodian at the detention hearing.

(B) Detention Hearing; Procedure. At the detention hearing:

(1) The court must determine whether a parent, guardian, or legal custodian has been notified and is present. If a parent, guardian, or legal custodian has been notified, but fails to appear, the detention hearing may be conducted without a parent, guardian, or legal custodian if a guardian ad litem or attorney appears with the juvenile.

(2) The court must provide the juvenile with a copy of the petition alleging probation violation.

(3) The court must read the petition to the juvenile, unless the attorney or juvenile waives the reading.

(4) The court must advise the juvenile of the juvenile's rights as provided in subrule (C)(1) and of the possible dispositions.

(5) The juvenile must be allowed an opportunity to deny or otherwise plead to the probation violation. If the juvenile wishes to admit the probation violation or plead no contest, the court must comply with subrule (D) before accepting the plea.

(a) If the juvenile admits the probation violation or pleads no contest, and the court accepts the plea, the court may modify the existing order of

probation or may order any disposition available under MCL 712A.18 or MCL 712A.18a.

(b) If the juvenile denies the probation violation or remains silent, the court must schedule a probation violation hearing, which must commence within 42 days. The court may order the juvenile detained without bond pending the probation violation hearing if there is probable cause to believe the juvenile violated probation. If the hearing is not commenced within 42 days, and the delay in commencing the hearing is not attributable to the juvenile, the juvenile must be released pending hearing without requiring that bail be posted.

(C) Probation Violation Hearing.

(1) At the probation violation hearing, the juvenile has the following rights:

(a) the right to be present at the hearing,

(b) the right to an attorney pursuant to MCR 3.915(A)(1),

(c) the right to have the petitioner prove the probation violation by a preponderance of the evidence,

(d) the right to have the court order any witnesses to appear at the hearing,

(e) the right to question witnesses against the juvenile,

(f) the right to remain silent and not have that silence used against the juvenile, and

(g) the right to testify at the hearing, if the juvenile wants to testify.

(2) At the probation violation hearing, the Michigan Rules of Evidence do not apply, other than those with respect to privileges. There is no right to a jury.

(3) If it is alleged that the juvenile violated probation by having been found, pursuant to MCR 3.941 or MCR 3.942, to have committed an offense, the juvenile may then be found to have violated probation pursuant to this rule.

(D) Pleas of Admission or No Contest. If the juvenile wishes to admit the probation violation or plead no contest, before accepting the plea, the court must:

(1) tell the juvenile the nature of the alleged probation violation;

(2) tell the juvenile the possible dispositions;

(3) tell the juvenile that if the plea is accepted, the juvenile will not have a contested hearing of any kind, so the juvenile would give up the rights that the juvenile would have at a contested hearing, including the rights as provided in subrule (C)(1);

(4) confirm any plea agreement on the record;

(5) ask the juvenile if any promises have been made beyond those in the plea agreement and whether anyone has threatened the juvenile;

(6) establish support for a finding that the juvenile violated probation,

(a) by questioning the juvenile or by other means when the plea is a plea of admission, or

(b) by means other than questioning the juvenile when the juvenile pleads no contest. The court must also state why a plea of no contest is appropriate;

(7) inquire of the parent, guardian, legal custodian, or guardian ad litem whether there is any reason why the court should not accept the juvenile's plea. Agreement or objection by the parent, guardian, legal custodian, or guardian ad litem to a plea of admission or of no contest by a juvenile shall be placed on the record if the parent, guardian, legal custodian, or guardian ad litem is present; and

(8) determine that the plea is accurately, voluntarily and understandingly made.

(E) Disposition of Probation Violation; Reporting.

(1) If, after hearing, the court finds that a violation of probation has occurred, the court may modify the existing order of probation or order any disposition available under MCL 712A.18 or MCL 712A.18a.

(2) If, after hearing, the court finds that a violation of probation occurred on the basis of the juvenile having committed an offense, that finding must be recorded as a violation of probation only and not a finding that the juvenile committed the underlying offense. That finding must not be reported to the State Police or the Secretary of State as an adjudication or a disposition.

Rule 3.945 Dispositional Review

(A) Dispositional Review Hearings.

(1) Generally. The court must conduct periodic hearings to review the dispositional orders in delinquency cases in which the juvenile has been placed outside the home. Such review hearings must be conducted at intervals designated by the court, or may be requested at any time by a party or by a probation officer or caseworker. The victim has a right to make a statement at the hearing or submit a written statement for use at the hearing, or both. At a dispositional review hearing, the court may modify or amend the dispositional order or treatment plan to include any disposition permitted by MCL 712A.18 and MCL 712A.18a or as otherwise permitted by law. The Michigan Rules of Evidence, other than those with respect to privileges, do not apply.

(2) Required Review Hearings.

(a) If the juvenile is placed in out-of-home care, the court must hold dispositional review hearings no later than every 182 days after the initial disposition, as provided in MCL 712A.19(2).

(b) A review hearing is required before a juvenile is moved to a more physically restrictive type of placement, unless the court in its dispositional order has provided for a more physically restrictive type of placement. A review hearing is not required if the juvenile and a parent consent to the

new placement in a writing filed with the court. A juvenile, who has been ordered placed in a juvenile facility, may be released only with the approval of the court.

(B) Hearing to Extend Jurisdiction.

(1) When Required. When a juvenile committed under MCL 712A.18(1)(e) for an offense specified in MCL 712A.18d remains under court jurisdiction after the juvenile's 18th birthday, the court must conduct a hearing to determine whether to extend the court's jurisdiction to age 21, pursuant to MCL 712A.18d.

(a) Time of Hearing. Unless adjourned for good cause, a commitment review hearing must be held as nearly as possible to, but before, the juvenile's 19th birthday.

(b) Notice of Hearing. Notice of the hearing must be given to the prosecuting attorney, the agency or the superintendent of the institution or facility to which the juvenile has been committed, the juvenile, and, if the address or whereabouts are known, the parent, guardian or legal custodian of the juvenile, at least 14 days before the hearing. The notice must clearly indicate that the court may extend jurisdiction over the juvenile until the juvenile reaches 21 years of age and must include advice to the juvenile and the parent, guardian, or legal custodian that the juvenile has the right to an attorney.

(2) Appointment of Attorney. The court must appoint an attorney to represent the juvenile at the hearing unless an attorney has been retained.

(3) Evidence; Commitment Report. The Michigan Rules of Evidence do not apply, other than those with respect to privileges. The institution, agency, or facility must prepare a report for use at the hearing to extend jurisdiction. The report must contain information required by MCL 803.225. The court must consider this information in determining whether to extend jurisdiction beyond the age of 19.

(4) Burden of Proof; Findings. The court must extend jurisdiction over the juvenile until the age of 21, unless the juvenile proves by a preponderance of the evidence that the juvenile has been rehabilitated and does not present a serious risk to public safety. In making the determination, the court must consider the following factors:

(a) the extent and nature of the juvenile's participation in education, counseling, or work programs;

(b) the juvenile's willingness to accept responsibility for prior behavior;

(c) the juvenile's behavior in the current placement;

(d) the juvenile's prior record, character, and physical and mental maturity;

(e) the juvenile's potential for violent conduct, as demonstrated by prior behavior;

(f) the recommendations of the institution, agency, or facility charged with the juvenile's care regarding the appropriateness of the juvenile's release or continued custody; and

(g) any other information the prosecuting attorney or the juvenile submits.

(C) Review of Extended Jurisdiction Cases.

(1) Out-of-Home Care. If the juvenile is placed outside the home, the court must hold a dispositional review hearing no later than every 182 days after the hearing to extend jurisdiction.

(2) Periodic Review. If the institution, agency, or facility to which the juvenile was committed believes that the juvenile has been rehabilitated and does not present a serious risk to public safety, the institution, agency, or facility may petition the court to conduct a review hearing at any time before the juvenile becomes 21 years of age.

(D) Juvenile on Conditional Release. The procedures set forth in MCR 3.944 apply to juveniles committed under MCL 712A.18 who have allegedly violated a condition of release after being returned to the community on release from a public institution. The court need not conduct such a hearing when there will be an administrative hearing by the agency to which the juvenile is committed, provided the court has not retained jurisdiction.

Rule 3.946 Post-Dispositional Secure Detention Pending Return to Placement

(A) If a juvenile who has been found to have committed an offense that would be a misdemeanor or a felony if committed by an adult has been placed out of the home by court order or by the Family Independence Agency, and the juvenile leaves such placement without authority, upon being apprehended the juvenile may be detained without the right to bail. Any detention must be authorized by the court.

(B) If a juvenile is placed in secure detention pursuant to this rule and no new petition is filed that would require a preliminary hearing pursuant to MCR 3.935, and no probation violation petition is filed, the court must conduct a detention hearing within 48 hours after the juvenile has been taken into custody, excluding Sundays and holidays as defined by MCR 8.110(D)(2).

(C) At the detention hearing the court must:

(1) assure that the custodial parent, guardian, or legal custodian has been notified, if that person's whereabouts are known,

(2) advise the juvenile of the right to be represented by an attorney,

(3) determine whether the juvenile should be released or should continue to be detained.

Rule 3.950 Waiver of Jurisdiction

(A) Authority. Only a judge assigned to hear cases in the family division of the circuit court of the county where the offense is alleged to have been committed may waive jurisdiction pursuant to MCL 712A.4.

(B) Definition. As used in this rule, "felony" means an offense punishable by imprisonment for more than one year or an offense designated by law as a felony.

(C) Motion by Prosecuting Attorney. A motion by the prosecuting attorney requesting that the family division waive its jurisdiction to a court of general criminal jurisdiction must be in writing and must clearly indicate the charges and that if the motion is granted the juvenile will be prosecuted as though an adult.

(1) A motion to waive jurisdiction of the juvenile must be filed within 14 days after the petition has been authorized to be filed. Absent a timely motion and good cause shown, the juvenile shall no longer be subject to waiver of jurisdiction on the charges.

(2) A copy of the motion seeking waiver must be personally served on the juvenile and the parent, guardian, or legal custodian of the juvenile, if their addresses or whereabouts are known or can be determined by the exercise of due diligence.

(D) Hearing Procedure. The waiver hearing consists of two phases. Notice of the date, time, and place of the hearings may be given either on the record directly to the juvenile or to the attorney for the juvenile, the prosecuting attorney, and all other parties, or in writing, served on each individual.

(1) First Phase. The first-phase hearing is to determine whether there is probable cause to believe that an offense has been committed that if committed by an adult would be a felony, and that there is probable cause to believe that the juvenile who is 14 years of age or older committed the offense.

(a) The probable cause hearing shall be commenced within 28 days after the filing of the petition unless adjourned for good cause.

(b) At the hearing, the prosecuting attorney has the burden to present legally admissible evidence to establish each element of the offense and to establish probable cause that the juvenile committed the offense.

(c) The court need not conduct the first phase of the waiver hearing, if:

(i) the court has found the requisite probable cause at a hearing under MCR 3.935(D)(1), provided that at the earlier hearing only legally admissible evidence was used to establish probable cause that the offense was committed and probable cause that the juvenile committed the offense; or

(ii) the juvenile, after being informed by the court on the record that the probable cause hearing is equivalent to and held in place of preliminary examination in district court, waives the hearing. The court must determine that the waiver of hearing is freely, voluntarily, and understandingly given and that the juvenile knows there will be no preliminary examination in district court if the court waives jurisdiction.

(2) Second Phase. If the court finds the requisite probable cause at the first-phase hearing, or if there is no hearing pursuant to subrule (D)(1)(c), the second-phase hearing shall be held to determine whether the interests of the juvenile and the public would best be served by granting the motion. However,

if the juvenile has been previously subject to the general criminal jurisdiction of the circuit court under MCL 712A.4 or 600.606, the court shall waive jurisdiction of the juvenile to the court of general criminal jurisdiction without holding the second-phase hearing.

(a) The second-phase hearing shall be commenced within 28 days after the conclusion of the first phase, or within 35 days after the filing of the petition if there was no hearing pursuant to subrule (D)(1)(c), unless adjourned for good cause.

(b) The Michigan Rules of Evidence, other than those with respect to privileges, do not apply to the second phase of the waiver hearing.

(c) The prosecuting attorney has the burden of establishing by a preponderance of the evidence that the best interests of the juvenile and the public would be served by waiver.

(d) The court, in determining whether to waive the juvenile to the court having general criminal jurisdiction, shall consider and make findings on the following criteria, giving greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency than to the other criteria:

(i) the seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the effect on any victim;

(ii) the culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines;

(iii) the juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;

(iv) the juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming;

(v) the adequacy of the punishment or programming available in the juvenile justice system;

(vi) the dispositional options available for the juvenile.

(e) In determining whether to waive the juvenile to the court having general criminal jurisdiction, the court may also consider any stipulation by the defense to a finding that the best interests of the juvenile and the public support a waiver.

(E) Grant of Waiver Motion.

(1) If the court determines that it is in the best interests of the juvenile and public to waive jurisdiction over the juvenile, the court must:

(a) Enter a written order granting the motion to waive jurisdiction and transferring the matter to the appropriate court having general criminal jurisdiction for arraignment of the juvenile on an information.

(b) Make findings of fact and conclusions of law forming the basis for entry of the waiver order. The findings and conclusions may be incorporated in a written opinion or stated on the record.

(c) Advise the juvenile, orally or in writing, that

(i) the juvenile is entitled to appellate review of the decision to waive jurisdiction,

(ii) the juvenile must seek review of the decision in the Court of Appeals within 21 days of the order to preserve the appeal of right, and

(iii) if the juvenile is financially unable to retain an attorney, the court will appoint one to represent the juvenile on appeal.

(d) The court shall send, without cost, a copy of the order and a copy of the written opinion or transcript of the court's findings and conclusions, to the court having general criminal jurisdiction.

(2) Upon the grant of a waiver motion, a juvenile must be transferred to the adult criminal justice system and is subject to the same procedures used for adult criminal defendants. Juveniles waived pursuant to this rule are not required to be kept separate and apart from adult prisoners.

(F) Denial of Waiver Motion. If the waiver motion is denied, the court shall make written findings or place them on the record. A transcript of the court's findings or, if a written opinion is prepared, a copy of the written opinion must be sent to the prosecuting attorney and the juvenile, or juvenile's attorney, upon request. If the juvenile is detained and the trial of the matter in the family division has not started within 28 days after entry of the order denying the waiver motion, and the delay is not attributable to the defense, the court shall forthwith order the juvenile released pending trial without requiring that bail be posted, unless the juvenile is being detained on another matter.

(G) Psychiatric Testimony.

(1) A psychiatrist, psychologist, or certified social worker who conducts a court-ordered examination for the purpose of a waiver hearing may not testify at a subsequent criminal proceeding involving the juvenile without the juvenile's written consent.

(2) The juvenile's consent may only be given:

(a) in the presence of an attorney representing the juvenile or, if no attorney represents the juvenile, in the presence of a parent, guardian, or legal custodian;

(b) after the juvenile has had an opportunity to read the report of the psychiatrist, psychologist, or certified social worker; and

(c) after the waiver decision is rendered.

(3) Consent to testimony by the psychiatrist, psychologist, or certified social worker does not waive the juvenile's privilege against self-incrimination.

Rule 3.951 Initiating Designated Proceedings

(A) Prosecutor-Designated Cases. The procedures in this subrule apply if the prosecuting attorney submits a petition designating the case for trial in the same manner as an adult.

(1) Time for Arraignment.

(a) If the juvenile is in custody or custody is requested, the arraignment must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays as defined by MCR 8.110(D)(2), or the juvenile must be released. The court may adjourn the arraignment for up to 7 days to secure the attendance of the juvenile's parent, guardian, or legal custodian or of a witness, or for other good cause shown.

(b) If the juvenile is not in custody and custody is not requested, the juvenile must be brought before the court for an arraignment as soon as the juvenile's attendance can be secured.

(2) Procedure.

(a) The court shall determine whether the juvenile's parent, guardian, or legal custodian has been notified and is present. The arraignment may be conducted without a parent, guardian, or legal custodian, provided a guardian ad litem or attorney appears with the juvenile.

(b) The court shall read the allegations in the petition and advise the juvenile on the record in plain language:

(i) of the right to an attorney pursuant to MCR 3.915(A)(1);

(ii) of the right to trial by judge or jury on the allegations in the petition;

(iii) of the right to remain silent and that any statement made by the juvenile may be used against the juvenile;

(iv) of the right to have a preliminary examination within 14 days;

(v) that the case has been designated for trial in the same manner as an adult and, if the prosecuting attorney proves that there is probable cause to believe an offense was committed and there is probable cause to believe that the juvenile committed the offense, the juvenile will be afforded all the rights of an adult charged with the same crime and that upon conviction the juvenile may be sentenced as an adult; and

(vi) of the maximum possible prison sentence and any mandatory minimum sentence required by law.

(c) Unless the arraignment is adjourned, the court must decide whether to authorize the petition to be filed. If it authorizes the filing of the petition, the court must:

(i) determine if fingerprints must be taken as provided by MCR 3.936;

(ii) schedule a preliminary examination within 14 days before a judge other than the judge who would conduct the trial;

(iii) if the juvenile is in custody or custody is requested, determine whether to detain or release the juvenile as provided in MCR 3.935(C).

(d) If the juvenile is in custody or custody is requested, the juvenile may be detained pending the completion of the arraignment if it appears to the court that one of the circumstances in MCR 3.935(D)(1) is present.

(3) Amendment of Petition. If a petition submitted by the prosecuting attorney alleging a specified juvenile violation did not include a designation of the case for trial as an adult:

(a) The prosecuting attorney may, by right, amend the petition to designate the case during the preliminary hearing.

(b) The prosecuting attorney may request leave of the court to amend the petition to designate the case no later than the pretrial hearing or, if there is no pretrial hearing, at least 21 days before trial, absent good cause for further delay. The court may permit the prosecuting attorney to amend the petition to designate the case as the interests of justice require.

(B) Court-Designated Cases. The procedures in this subrule apply if the prosecuting attorney submits a petition charging an offense other than a specified juvenile violation and requests the court to designate the case for trial in the same manner as an adult.

(1) Time for Arraignment.

(a) If the juvenile is in custody or custody is requested, the arraignment must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays as defined by MCR 8.110(D)(2), or the juvenile must be released. The court may adjourn the arraignment for up to 7 days to secure the attendance of the juvenile's parent, guardian, or legal custodian or of a witness, or for other good cause shown.

(b) If the juvenile is not in custody and custody is not requested, the juvenile must be brought before the court for an arraignment as soon as the juvenile's attendance can be secured.

(2) Procedure.

(a) The court shall determine whether the juvenile's parent, guardian, or legal custodian has been notified and is present. The arraignment may be conducted without a parent, guardian, or legal custodian, provided a guardian ad litem or attorney appears with the juvenile.

(b) The court shall read the allegations in the petition, and advise the juvenile on the record in plain language:

(i) of the right to an attorney pursuant to MCR 3.915(A)(1);

(ii) of the right to trial by judge or jury on the allegations in the petition;

(iii) of the right to remain silent and that any statement made by the juvenile may be used against the juvenile;

(iv) of the right to have a designation hearing within 14 days;

(v) of the right to have a preliminary examination within 14 days after the case is designated if the juvenile is charged with a felony or offense for which an adult could be imprisoned for more than one year;

(vi) that if the case is designated by the court for trial in the same manner as an adult and, if a preliminary examination is required by law, the prosecuting attorney proves that there is probable cause to believe that an offense was committed and there is probable cause to believe that the juvenile committed the offense, the juvenile will be afforded all the rights of an adult charged with the same crime and that upon conviction the juvenile may be sentenced as an adult;

(vii) of the maximum possible prison sentence and any mandatory minimum sentence required by law.

(c) Unless the arraignment is adjourned, the court must decide whether to authorize the petition to be filed. If it authorizes the filing of the petition, the court must:

(i) determine if fingerprints must be taken as provided by MCR 3.936;

(ii) schedule a designation hearing within 14 days;

(iii) if the juvenile is in custody or custody is requested, determine whether to detain or release the juvenile as provided in MCR 3.935(C).

(d) If the juvenile is in custody or custody is requested, the juvenile may be detained pending the completion of the arraignment if it appears to the court that one of the circumstances in MCR 3.935(D)(1) is present.

(3) Amendment of Petition. If a petition submitted by the prosecuting attorney alleging an offense other than a specified juvenile violation did not include a request that the court designate the case for trial as an adult:

(a) The prosecuting attorney may, by right, amend the petition to request the court to designate the case during the preliminary hearing.

(b) The prosecuting attorney may request leave of the court to amend the petition to request the court to designate the case no later than the pretrial hearing or, if there is no pretrial hearing, at least 21 days before trial, absent good cause for further delay. The court may permit the prosecuting attorney to amend the petition to request the court to designate the case as the interests of justice require.

Rule 3.952 Designation Hearing

(A) Time. The designation hearing shall be commenced within 14 days after the arraignment, unless adjourned for good cause.

(B) Notice.

(1) A copy of the petition or a copy of the petition and separate written request for court designation must be personally served on the juvenile and the juvenile's parent, guardian, or legal custodian, if the address or whereabouts of the juvenile's parent, guardian, or custodian is known or can be determined by the exercise of due diligence.

(2) Notice of the date, time, and place of the designation hearing must be given to the juvenile, the juvenile's parent, guardian, or legal custodian, the attorney for the juvenile, if any, and the prosecuting attorney. The notice may be given either orally on the record or in writing, served on each individual by mail, or given in another manner reasonably calculated to provide notice.

(C) Hearing Procedure.

(1) Evidence. The Michigan Rules of Evidence, other than those with respect to privileges, do not apply.

(2) Burden of Proof. The prosecuting attorney has the burden of proving by a preponderance of the evidence that the best interests of the juvenile and the public would be served by designation.

(3) Factors to be Considered. In determining whether to designate the case for trial in the same manner as an adult, the court must consider all the following factors, giving greater weight to the seriousness of the alleged offense and the juvenile's prior delinquency record than to the other factors:

(a) the seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the effect on any victim;

(b) the culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines;

(c) the juvenile's prior record of delinquency, including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;

(d) the juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming;

(e) the adequacy of the punishment or programming available in the juvenile justice system; and

(f) the dispositional options available for the juvenile.

(D) Grant of Request for Court Designation.

(1) If the court determines that it is in the best interests of the juvenile and the public that the juvenile be tried in the same manner as an adult in the family division of the circuit court, the court must:

(a) Enter a written order granting the request for court designation and

(i) schedule a preliminary examination within 14 days if the juvenile is charged with a felony or an offense for which an adult could be imprisoned for more than one year, or

(ii) schedule the matter for trial or pretrial hearing if the juvenile is charged with a misdemeanor.

(b) Make findings of fact and conclusions of law forming the basis for entry of the order designating the petition. The findings and conclusions may be incorporated in a written opinion or stated on the record.

(E) Denial of Request for Designation. If the request for court designation is denied, the court shall make written findings or place them on the record. Further proceedings shall be conducted pursuant to MCR 3.941-3.944.

Rule 3.953 Preliminary Examination in Designated Cases

(A) Requirement. A preliminary examination must be held only in designated cases in which the juvenile is alleged to have committed a felony or an offense for which an adult could be imprisoned for more than one year.

(B) Waiver. The juvenile may waive the preliminary examination if the juvenile is represented by an attorney and the waiver is made and signed by the juvenile in open court. The judge shall find and place on the record that the waiver was freely, understandingly, and voluntarily given.

(C) Combined Hearing. The preliminary examination may be combined with a designation hearing provided that the Michigan Rules of Evidence, except as otherwise provided by law, apply only to the preliminary examination phase of the combined hearing.

(D) Time. The preliminary examination must commence within 14 days of the arraignment in a prosecutor-designated case or within 14 days after court-ordered designation of a petition, unless the preliminary examination was combined with the designation hearing.

(E) Procedure. The preliminary examination must be conducted in accordance with MCR 6.110.

(F) Findings.

(1) If the court finds there is probable cause to believe that the alleged offense was committed and probable cause to believe the juvenile committed the offense, the court may schedule the matter for trial or a pretrial hearing.

(2) If the court does not find there is probable cause to believe that the alleged offense was committed or does not find there is probable cause to believe the juvenile committed the offense, the court shall dismiss the petition, unless the

court finds there is probable cause to believe that a lesser included offense was committed and probable cause to believe the juvenile committed that offense.

(3) If the court finds there is probable cause to believe that a lesser included offense was committed and probable cause to believe the juvenile committed that offense, the court may, as provided in MCR 3.952, further determine whether the case should be designated as a case in which the juvenile should be tried in the same manner as an adult. If the court designates the case following the determination of probable cause under this subrule, the court may schedule the matter for trial or a pretrial hearing.

(G) Confinement. If the court has designated the case and finds probable cause to believe that a felony or an offense for which an adult could be imprisoned for more than one year has been committed and probable cause to believe that the juvenile committed the offense, the judge may confine the juvenile in the county jail pending trial. If the juvenile is under 17 years of age, the juvenile may be confined in jail only if the juvenile can be separated by sight and sound from adult prisoners and if the sheriff has approved the confinement.

Rule 3.954 Trial of Designated Cases

Trials of designated cases are governed by subchapter 6.400, except for MCR 6.402(A). The court may not accept a waiver of trial by jury until after the juvenile has been offered an opportunity to consult with a lawyer. Pleas in designated cases are governed by subchapter 6.300.

Rule 3.955 Sentencing or Disposition in Designated Cases

(A) Determining Whether to Sentence or Impose Disposition. If a juvenile is convicted under MCL 712A.2d, sentencing or disposition shall be made as provided in MCL 712A.18(1)(n) and the Crime Victim's Rights Act, MCL 780.751 *et seq.*, if applicable. In deciding whether to enter an order of disposition, or impose or delay imposition of sentence, the court shall consider all the following factors, giving greater weight to the seriousness of the offense and the juvenile's prior record:

(1) the seriousness of the alleged offense in terms of community protection, including but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the effect on any victim;

(2) the culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines;

(3) the juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;

(4) the juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming;

(5) the adequacy of the punishment or programming available in the juvenile justice system; and

(6) the dispositional options available for the juvenile.

The court also shall give the juvenile, the juvenile`s lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in deciding whether to enter an order of disposition or to impose or delay imposition of sentence.

(B) Burden of Proof. The court shall enter an order of disposition unless the court determines that the best interests of the public would be served by sentencing the juvenile as an adult. The prosecuting attorney has the burden of proving by a preponderance of the evidence that, on the basis of the criteria in subrule (A), it would be in the best interests of the public to sentence the juvenile as an adult.

(C) Sentencing. If the court determines that the juvenile should be sentenced as an adult, either initially or following a delayed imposition of sentence, the sentencing hearing shall be held in accordance with the procedures set forth in MCR 6.425.

(D) Delayed Imposition of Sentence. If the court determines that the juvenile should be sentenced as an adult, the court may, in its discretion, enter an order of disposition delaying imposition of sentence and placing the juvenile on probation on such terms and conditions as it considers appropriate, including ordering any disposition under MCL 712A.18. A delayed sentence may be imposed in accordance with MCR 3.956.

(E) Disposition Hearing. If the court does not determine that the juvenile should be sentenced as an adult, the court shall hold a dispositional hearing and comply with the procedures set forth in MCR 3.943.

Rule 3.956 Review Hearings; Probation Violation

(A) Review Hearings in Delayed Imposition of Sentence Cases.

(1) When Required. If the court entered an order of disposition delaying imposition of sentence, the court shall conduct a review hearing to determine whether the juvenile has been rehabilitated and whether the juvenile presents a serious risk to public safety.

(a) Time of Hearing.

(i) Annual Review. The court shall conduct an annual review of the probation, including, but not limited to, the services being provided to the juvenile, the juvenile's placement, and the juvenile's progress in placement. In conducting the review, the court must examine any report prepared under MCL 803.223, and any report prepared by the officer or agency supervising probation. The court may order changes in the juvenile's probation on the basis of the review including, but not limited to, imposition of sentence.

(ii) Review on Request of Institution or Agency. If an institution or agency to which the juvenile was committed believes that the juvenile has been rehabilitated and does not present a serious risk to public

safety, the institution or agency may petition the court to conduct a review hearing at any time before the juvenile becomes 19 years of age or, if the court has extended jurisdiction, any time before the juvenile becomes 21 years of age.

(iii) Mandatory Review. The court shall schedule a review hearing to be held within 42 days before the juvenile attains the age of 19, unless adjourned for good cause.

(iv) Final Review. The court shall conduct a final review of the juvenile's probation not less than 91 days before the end of the probation period.

(b) Notice of Hearing. Notice of the hearing must be given at least 14 days before the hearing to

(i) the prosecuting attorney;

(ii) the agency or the superintendent of the institution or facility to which the juvenile has been committed;

(iii) the juvenile; and

(iv) if the address or whereabouts are known, the parent, guardian, or legal custodian of the juvenile.

The notice must clearly indicate that the court may extend jurisdiction over the juvenile or impose sentence and must advise the juvenile and the parent, guardian, or legal custodian of the juvenile that the juvenile has a right to an attorney.

(2) Appointment of Attorney. The court must appoint an attorney to represent the juvenile unless an attorney has been retained. The court may assess the cost of providing an attorney as costs against the juvenile or those responsible for the juvenile's support, or both, if the persons to be assessed are financially able to comply.

(3) Evidence; Commitment Report. The court may consider the commitment report prepared as provided in MCL 803.225 and any report prepared upon the court's order by the officer or agency supervising probation.

(4) Burden of Proof; Findings.

(a) Before the court may continue jurisdiction over the juvenile or impose sentence, the prosecuting attorney must demonstrate by a preponderance of the evidence that the juvenile has not been rehabilitated or that the juvenile presents a serious risk to public safety. The Michigan Rules of Evidence, other than those with respect to privileges, do not apply. In making the determination, the court must consider the following factors:

(i) the extent and nature of the juvenile's participation in education, counseling, or work programs;

(ii) the juvenile's willingness to accept responsibility for prior behavior;

(iii) the juvenile's behavior in the current placement;

(iv) the juvenile's prior record, character, and physical and mental maturity;

(v) the juvenile's potential for violent conduct as demonstrated by prior behavior;

(vi) the recommendation of the institution, agency, or facility charged with the juvenile's care for the juvenile's release or continued custody;

(vii) any other information the prosecuting attorney or the juvenile submit.

(b) Before the court may impose a sentence at the final review hearing, the court must determine that the best interests of the public would be served by the imposition of a sentence provided by law for an adult offender. In making the determination, the court must consider the following factors, in addition to the criteria specified in subrule (4)(a):

(i) the effect of treatment on the juvenile's rehabilitation;

(ii) whether the juvenile is likely to be dangerous to the public if released;

(iii) the best interests of the public welfare and the protection of public security.

(5) Sentencing credit. If a sentence of imprisonment is imposed, the juvenile shall receive credit for the time served on probation.

(B) Violation of Probation in Delayed Imposition of Sentence Cases.

(1) Subsequent Conviction. If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation by being convicted of a felony or a misdemeanor punishable by imprisonment for more than 1 year, or adjudicated as responsible for an offense that if committed by an adult would be a felony or a misdemeanor punishable by imprisonment for more than 1 year, the court shall revoke probation and sentence the juvenile to imprisonment for a term that does not exceed the penalty that could have been imposed for the offense for which the juvenile was originally convicted and placed on probation.

(2) Other Violations of Probation. If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation other than as provided in subrule (B)(1), the court may impose sentence or may order any of the following for the juvenile:

(a) A change in placement.

(b) Community service.

(c) Substance abuse counseling.

(d) Mental health counseling.

(e) Participation in a vocational-technical program.

(f) Incarceration in the county jail for not more than 30 days if the present county jail facility would meet all requirements under federal law and regulations for housing juveniles, and if the court has consulted with the sheriff to determine when the sentence will begin to ensure that space will be available for the juvenile. If the juvenile is under 17 years of age, the juvenile must be placed in a room or ward out of sight and sound from adult prisoners.

(g) Other participation or performance as the court considers necessary.

(3) Hearing. The probation violation hearing must be conducted pursuant to MCR 3.944(C).

(4) Sentencing Credit. If a sentence of imprisonment is imposed, the juvenile must receive credit for the time served on probation.

Rule 3.961 Initiating Child Protective Proceedings

(A) Form. Absent exigent circumstances, a request for court action to protect a child must be in the form of a petition.

(B) Content of Petition. A petition must contain the following information, if known:

(1) The child's name, address, and date of birth.

(2) The names and addresses of:

(a) the child's mother and father,

(b) the parent, guardian, legal custodian, or person who has custody of the child, if other than a mother or father,

(c) the nearest known relative of the child, if no parent, guardian, or legal custodian can be found, and

(d) any court with prior continuing jurisdiction.

(3) The essential facts that constitute an offense against the child under the Juvenile Code.

(4) A citation to the section of the Juvenile Code relied on for jurisdiction.

(5) The child's membership or eligibility for membership in an American Indian tribe or band, if any, and the identity of the tribe.

(6) The type of relief requested. A request for removal of the child or a parent or for termination of parental rights at the initial disposition must be specifically stated.

(7) The information required by MCR 3.206(A)(4), identifying whether a family division matter involving members of the same family is or was pending.

Rule 3.962 Preliminary Inquiry

(A) Purpose. When a petition is not accompanied by a request for placement of the child and the child is not in temporary custody, the court may conduct a preliminary inquiry to determine the appropriate action to be taken on a petition.

(B) Action by Court. A preliminary inquiry need not be conducted on the record or in the presence of the parties. At the preliminary inquiry, the court may:

(1) Deny authorization of the petition.

(2) Refer the matter to alternative services.

(3) Authorize the filing of the petition if it contains the information required by MCR 3.961(B), and there is probable cause to believe that one or more of the allegations is true. For the purpose of this subrule, probable cause may be established with such information and in such a manner as the court deems sufficient.

Rule 3.963 Protective Custody of Child

(A) Taking Custody Without Court Order. An officer may without court order remove a child from the child's surroundings and take the child into protective custody if, after investigation, the officer has reasonable grounds to conclude that the health, safety, or welfare of the child is endangered.

(B) Court-Ordered Custody.

(1) The court may issue a written order authorizing a child protective services worker, an officer, or other person deemed suitable by the court to immediately take a child into protective custody when, upon presentment of proofs as required by the court, the judge or referee has reasonable grounds to believe that conditions or surroundings under which the child is found are such as would endanger the health, safety, or welfare of the child and that remaining in the home would be contrary to the welfare of the child. At the time it issues the order or as provided in MCR 3.965(D), the court shall make a judicial determination that reasonable efforts to prevent removal of the child have been made or are not required. The court may also include in such an order authorization to enter specified premises to remove the child.

(2) The written order must indicate that the judge or referee has determined that continuation in the home is contrary to the welfare of the child and must state the basis for that determination.

(3) The court shall inquire whether a member of the child's immediate or extended family is available to take custody of the child pending preliminary hearing, whether there has been a central registry clearance, and whether a criminal history check has been initiated.

(C) Arranging for Court Appearance. An officer or other person who takes a child into protective custody must:

(1) immediately attempt to notify the child's parent, guardian, or legal custodian of the protective custody;

(2) inform the parent, guardian, or legal custodian of the date, time, and place of the preliminary hearing scheduled by the court;

(3) immediately bring the child to the court for preliminary hearing, or immediately contact the court for instructions regarding placement pending preliminary hearing;

(4) if the court is not open, contact the person designated under MCR 3.934(B)(2) for permission to place the child pending preliminary hearing;

(5) ensure that the petition is prepared and submitted to the court;

(6) prepare a custody statement similar to the statement required for detention of a juvenile as provided in MCR 3.934(A)(4) and submit it to the court.

Rule 3.965 Preliminary Hearing

(A) Time for Preliminary Hearing.

(1) Child in Protective Custody. The preliminary hearing must commence no later than 24 hours after the child has been taken into protective custody, excluding Sundays and holidays, as defined by MCR 8.110(D)(2), unless adjourned for good cause shown, or the child must be released.

(2) Severely Physically Injured or Sexually Abused Child. When the Family Independence Agency submits a petition in cases in which the child has been severely physically injured, as that term is defined in MCL 722.628(3)(c), or sexually abused, and subrule (A)(1) does not apply, the preliminary hearing must commence no later than 24 hours after the agency submits a petition or on the next business day following the submission of the petition.

(B) Procedure.

(1) The court must determine if the parent, guardian, or legal custodian has been notified, and if the lawyer-guardian ad litem for the child is present. The preliminary hearing may be adjourned for the purpose of securing the appearance of an attorney, parent, guardian, or legal custodian or may be conducted in the absence of the parent, guardian, or legal custodian if notice has been given or if the court finds that a reasonable attempt to give notice was made.

(2) The child's lawyer-guardian ad litem must be present to represent the child at the preliminary hearing. The court may make temporary orders for the protection of the child pending the appearance of an attorney or pending the completion of the preliminary hearing. The court must direct that the lawyer-guardian ad litem for the child receive a copy of the petition.

(3) If the respondent is present, the court must assure that the respondent has a copy of the petition. The court must read the allegations in the petition in open court, unless waived.

(4) The court shall determine if the petition should be dismissed or the matter referred to alternate services. If the court so determines the court must release the child. Otherwise, the court must continue the hearing.

(5) The court must advise the respondent of the right to the assistance of an attorney at the preliminary hearing and any subsequent hearing pursuant to MCR 3.915(B)(1)(a).

(6) The court must advise the respondent of the right to trial on the allegations in the petition and that the trial may be before a referee unless a demand for a jury or judge is filed pursuant to MCR 3.911 or 3.912.

(7) The court shall allow the respondent an opportunity to deny or admit the allegations and make a statement of explanation.

(8) The court must inquire whether the child is subject to the continuing jurisdiction of another court and, if so, which court.

(9) The court must inquire if the child or either parent is a member of any American Indian tribe or band. If the child is a member, or if a parent is a tribal member and the child is eligible for membership in the tribe, the court must determine the identity of the child's tribe, notify the tribe or band, and follow the procedures set forth in MCR 3.980.

(10) The court may adjourn the hearing for up to 14 days to secure the attendance of witnesses or for other good cause shown. If the preliminary hearing is adjourned, the court may make temporary orders for the placement of the child when necessary to assure the immediate safety of the child, pending the completion of the preliminary hearing and subject to subrules (C) and (D).

(11) Unless the preliminary hearing is adjourned, the court must decide whether to authorize the filing of the petition and, if authorized, whether the child should remain in the home, be returned home, or be placed in foster care pending trial. The court may authorize the filing of the petition upon a showing of probable cause, unless waived, that one or more of the allegations in the petition are true and fall within MCL 712A.2(b). The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent that such privileges are abrogated by MCL 722.631.

(12) If the court authorizes the filing of the petition, the court:

(a) may release the child to a parent, guardian, or legal custodian and may order such reasonable terms and conditions believed necessary to protect the physical health or mental well-being of the child; or

(b) may order placement of the child after making the determinations specified in subrules (C) and (D), if those determinations have not previously been made.

(13) The court must inquire of the parent, guardian, or legal custodian regarding the identity of relatives of the child who might be available to provide care. If the father of the child has not been identified, the court must inquire of the mother regarding the identity and whereabouts of the father.

(C) Pretrial Placement; Contrary to the Welfare Determination.

(1) Placement; Proofs. If the child was not released under subrule (B), the court shall receive evidence, unless waived, to establish that the criteria for placement set forth in subrule 3.965(C)(2) are present. The respondent shall be given an opportunity to cross-examine witnesses, to subpoena witnesses, and to offer proofs to counter the admitted evidence.

(2) Criteria. If continuing the child's residence in the home is contrary to the welfare of the child, the court shall not return the child to the home, but shall

order the child placed in the most family-like setting available consistent with the child's needs.

(3) Findings. If placement is ordered, the court must make a statement of findings, in writing or on the record, explicitly including the finding that it is contrary to the welfare of the child to remain at home and the reasons supporting that finding. If the "contrary to the welfare of the child" finding is placed on the record and not in a written statement of findings, it must be capable of being transcribed. The findings may be made on the basis of hearsay evidence that possesses adequate indicia of trustworthiness.

(4) Record Checks; Home Study. If the child has been placed in a relative's home,

(a) the court may order the Family Independence Agency to report the results of a criminal record check and central registry clearance of the residents of the home to the court before, or within 7 days after, the placement, and

(b) the court must order the Family Independence Agency to perform a home study with a copy to be submitted to the court not more than 30 days after the placement.

(5) No Right to Bail. No one has the right to post bail in a protective proceeding for the release of a child in the custody of the court.

(6) Parenting Time or Visitation.

(a) Unless the court suspends parenting time pursuant to MCL 712A.19b(4), or unless the child has a guardian or legal custodian, the court must permit each parent frequent parenting time with a child in placement unless parenting time, even if supervised, may be harmful to the child.

(b) If the child was living with a guardian or legal custodian, the court must determine what, if any, visitation will be permitted with the guardian or legal custodian.

(7) Medical Information. Unless the court has previously ordered the release of medical information, the order placing the child in foster care must include:

(a) an order that the child's parent, guardian, or legal custodian provide the supervising agency with the name and address of each of the child's medical providers, and

(b) an order that each of the child's medical providers release the child's medical records.

(D) Pretrial Placement; Reasonable Efforts Determination. In making the reasonable efforts determination under this subrule, the child's health and safety must be of paramount concern to the court.

(1) When the court has placed a child with someone other than the custodial parent, guardian, or legal custodian, the court must determine whether reasonable efforts to prevent the removal of the child have been made or that reasonable efforts to prevent removal are not required. The court must make

this determination at the earliest possible time, but no later than 60 days from the date of removal, and must state the factual basis for the determination in the court order. Nunc pro tunc orders or affidavits are not acceptable.

(2) Reasonable efforts to prevent a child's removal from the home are not required if a court of competent jurisdiction has determined that

(a) the parent has subjected the child to aggravated circumstances as listed in sections 18(1) and (2) of the Child Protection Law, MCL 722.638(1) and (2); or

(b) the parent has been convicted of 1 or more of the following:

(i) murder of another child of the parent,

(ii) voluntary manslaughter of another child of the parent,

(iii) aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter, or

(iv) a felony assault that results in serious bodily injury to the child or another child of the parent; or

(c) parental rights of the parent with respect to a sibling have been terminated involuntarily.

(E) Advice; Initial Service Plan. If placement is ordered, the court must, orally or in writing, inform the parties:

(1) that the agency designated to care and supervise the child will prepare an initial service plan no later than 30 days after the placement;

(2) that participation in the initial service plan is voluntary unless otherwise ordered by the court;

(3) that the general elements of an initial service plan include:

(a) the background of the child and the family,

(b) an evaluation of the experiences and problems of the child,

(c) a projection of the expected length of stay in foster care, and

(d) an identification of specific goals and projected time frames for meeting the goals; and

(4) that, on motion of a party, the court will review the initial service plan and may modify the plan if it is in the best interests of the child.

The court shall direct the agency to identify, locate, and consult with relatives to determine if placement with a relative would be in the child`s best interests, as required by MCL 722.954a(2). In a case to which MCL 712A.18f(6) applies, the court shall require the agency to provide the name and address of the child`s attending physician of record or primary care physician.

Rule 3.966 Other Placement Review Proceedings

(A) Review of Placement Order and Initial Service Plan.

(1) On motion of a party, the court must review the placement order or the initial service plan, and may modify the order and plan if it is in the best interest of the child and, if removal from the parent, guardian, or legal custodian is requested, determine whether the conditions in MCR 3.965(C)(2) exist.

(2) If the child is removed from the home and disposition is not completed, the progress of the child must be reviewed no later than 182 days from the date the child was removed from the home.

(B) Petitions to Review Placement Decisions by Supervising Agency.

(1) General. The court may review placement decisions when all of the following apply:

(a) a child has been removed from the home;

(b) the supervising agency has made a placement decision after identifying, locating, and consulting with relatives to determine placement with a fit and appropriate relative who would meet the child's developmental, emotional, and physical needs as an alternative to nonrelative foster care;

(c) the supervising agency has provided written notice of the placement decision;

(d) a person receiving notice has disagreed with the placement decision and has given the child's lawyer-guardian ad litem written notice of the disagreement within 5 days of the date on which the person receives notice; and

(e) the child's lawyer-guardian ad litem determines the decision is not in the child's best interest.

(2) Petition for Review. If the criteria in subrule (1) are met, within 14 days after the date of the agency's written placement decision, the child's lawyer-guardian ad litem must file a petition for review.

(3) Hearing on Petition. The court must commence a review hearing on the record within 7 days of the filing of the petition.

(C) Disputes Between Agency and Foster Care Review Board Regarding Change In Placement.

(1) General. The court must conduct a hearing upon notice from the Foster Care Review Board that, after an investigation, it disagrees with a proposed change in placement by the agency of a child who is not a permanent ward of the Michigan Children's Institute.

(2) Procedure.

(a) Time. The court must set the hearing no sooner than 7 days and no later than 14 days after receipt of the notice from the Foster Care Review Board that there is a disagreement regarding a placement change.

(b) Notice. The court must provide notice of the hearing date to the foster parents, each interested party, and the prosecuting attorney if the prosecuting attorney has appeared in the case.

(c) Evidence. The court may hear testimony from the agency and any other interested party. The court may consider any other evidence bearing upon the proposed change in placement. The Rules of Evidence do not apply to a hearing under this rule.

(d) Findings. The court must order the continuation or restoration of placement unless the court finds that the proposed change in placement is in the child's best interests.

Rule 3.971 Pleas of Admission or No Contest

(A) General. A respondent may make a plea of admission or of no contest to the original allegations in the petition. The court has discretion to allow a respondent to enter a plea of admission or a plea of no contest to an amended petition. The plea may be taken at any time after the filing of the petition, provided that the petitioner and the attorney for the child have been notified of a plea offer to an amended petition and have been given the opportunity to object before the plea is accepted.

(B) Advice of Rights and Possible Disposition. Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in a writing that is made a part of the file:

(1) of the allegations in the petition;

(2) of the right to an attorney, if respondent is without an attorney;

(3) that, if the court accepts the plea, the respondent will give up the rights to

(a) trial by a judge or trial by a jury,

(b) have the petitioner prove the allegations in the petition by a preponderance of the evidence,

(c) have witnesses against the respondent appear and testify under oath at the trial,

(d) cross-examine witnesses, and

(e) have the court subpoena any witnesses the respondent believes could give testimony in the respondent's favor;

(4) of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent.

(C) Voluntary, Accurate Plea.

(1) Voluntary Plea. The court shall not accept a plea of admission or of no contest without satisfying itself that the plea is knowingly, understandingly, and voluntarily made.

(2) Accurate Plea. The court shall not accept a plea of admission or of no contest without establishing support for a finding that one or more of the

statutory grounds alleged in the petition are true, preferably by questioning the respondent unless the offer is to plead no contest. If the plea is no contest, the court shall not question the respondent, but, by some other means, shall obtain support for a finding that one or more of the statutory grounds alleged in the petition are true. The court shall state why a plea of no contest is appropriate.

Rule 3.972 Trial

(A) Time. If the child is not in placement, the trial must be held within 6 months after the filing of the petition unless adjourned for good cause under MCR 3.923(G). If the child is in placement, the trial must commence as soon as possible, but not later than 63 days after the child is removed from the home unless the trial is postponed:

(1) on stipulation of the parties for good cause;

(2) because process cannot be completed; or

(3) because the court finds that the testimony of a presently unavailable witness is needed.

When trial is postponed pursuant to subrule (2) or (3), the court shall release the child to the parent, guardian, or legal custodian unless the court finds that releasing the child to the custody of the parent, guardian, or legal custodian will likely result in physical harm or serious emotional damage to the child.

If the child has been removed from the home, a review hearing must be held within 182 days of the date of the child's removal from the home, even if the trial has not been completed before the expiration of that 182-day period.

(B) Preliminary Proceedings.

(1) The court shall determine that the proper parties are present. The respondent has the right to be present, but the court may proceed in the absence of the respondent provided notice has been served on the respondent. The child may be excused as the court determines the child's interests require.

(2) The court shall read the allegations in the petition, unless waived.

(C) Evidentiary Matters.

(1) Evidence; Standard of Proof. Except as otherwise provided in these rules, the rules of evidence for a civil proceeding and the standard of proof by a preponderance of evidence apply at the trial, notwithstanding that the petition contains a request to terminate parental rights.

(2) Child's Statement. Any statement made by a child under 10 years of age or an incapacitated individual under 18 years of age with a developmental disability as defined in MCL 330.1100a(21) regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation, as defined in MCL 722.622 (f), (j), (w), or (x), performed with or on the child by another person may be admitted into evidence through the testimony of a person who heard the child make the statement as provided in this subrule.

(a) A statement describing such conduct may be admitted regardless of whether the child is available to testify or not, and is substantive evidence of the act or omission if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness. This statement may be received by the court in lieu of or in addition to the child's testimony.

(b) If the child has testified, a statement denying such conduct may be used for impeachment purposes as permitted by the rules of evidence.

(c) If the child has not testified, a statement denying such conduct may be admitted to impeach a statement admitted under subrule (2)(a) if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement denying the conduct provide adequate indicia of trustworthiness.

(D) Recommendation by Lawyer-Guardian ad Litem. At the conclusion of the proofs, the lawyer-guardian ad litem for the child may make a recommendation to the finder of fact regarding whether one or more of the statutory grounds alleged in the petition have been proven.

(E) Verdict. In a child protective proceeding, the verdict must be whether one or more of the statutory grounds alleged in the petition have been proven.

Rule 3.973 Dispositional Hearing

(A) Purpose. A dispositional hearing is conducted to determine what measures the court will take with respect to a child properly within its jurisdiction and, when applicable, against any adult, once the court has determined following trial, plea of admission, or plea of no contest that one or more of the statutory grounds alleged in the petition are true.

(B) Notice. Unless the dispositional hearing is held immediately after the trial, notice of hearing may be given by scheduling it on the record in the presence of the parties or in accordance with MCR 3.920.

(C) Time. The interval, if any, between the trial and the dispositional hearing is within the discretion of the court. When the child is in placement, the interval may not be more than 28 days, except for good cause.

(D) Presence of Parties.

(1) The child may be excused from the dispositional hearing as the interests of the child require.

(2) The respondent has the right to be present or may appear through an attorney.

(3) The court may proceed in the absence of parties provided that proper notice has been given.

(E) Evidence; Reports.

(1) The Michigan Rules of Evidence do not apply at the initial dispositional hearing, other than those with respect to privileges. However, as provided by MCL 722.631, no assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to a court-ordered examination, interview, or course of treatment.

(2) All relevant and material evidence, including oral and written reports, may be received and may be relied on to the extent of its probative value. The court shall consider the case service plan and any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom the child is placed. If the agency responsible for the care and supervision of the child recommends not placing the child with the parent, guardian, or legal custodian, the agency shall report in writing what efforts were made to prevent removal, or to rectify conditions that caused removal, of the child from the home.

(3) The parties shall be given an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals making the reports when those individuals are reasonably available.

(4) Written reports, other than those portions made confidential by law, case service plans, and court orders, including all updates and revisions, shall be available to the foster parent, child caring institution, or relative with whom the child is placed. The foster parents, child caring institution, or relative with whom the child is placed shall not have the right to cross-examine individuals making such reports or the right to controvert such reports beyond the making of a written or oral statement concerning the child as provided in subrule (E)(2).

(F) Dispositional Orders.

(1) The court shall enter an order of disposition as provided in the Juvenile Code and these rules.

(2) The court shall not enter an order of disposition until it has examined the case service plan as provided in MCL 712A.18f. The court may order compliance with all or part of the case service plan and may enter such orders as it considers necessary in the interest of the child.

(3) The court, on consideration of the written report prepared by the agency responsible for the care and supervision of the child pursuant to MCL 712A.18f(1), shall, when appropriate, include a statement in the order of disposition as to whether reasonable efforts were made:

(a) to prevent the child's removal from home, or

(b) to rectify the conditions that caused the child to be removed from the child's home.

(4) Medical Information. Unless the court has previously ordered the release of medical information, the order placing the child in foster care must include the following:

(a) an order that the child's parent, guardian, or legal custodian provide the supervising agency with the name and address of each of the child's medical providers, and

(b) an order that each of the child's medical providers release the child's medical records.

(5) Child Support. The court may include an order requiring one or both of the child's parents to pay child support. All child support orders entered under this subrule must comply with MCL 552.605 and MCR 3.211(D).

(G) Subsequent Review. When the court does not terminate jurisdiction upon entering its dispositional order, it must:

(1) follow the review procedures in MCR 3.975 for a child in placement, or

(2) review the progress of a child at home pursuant to the procedures of MCR 3.974(A).

(H) Allegations of Additional Abuse or Neglect.

(1) Proceedings on a supplemental petition seeking termination of parental rights on the basis of allegations of additional abuse or neglect, as defined in MCL 722.622(f) and (j), of a child who is under the jurisdiction of the court are governed by MCR 3.977.

(2) Where there is no request for termination of parental rights, proceedings regarding allegations of additional abuse or neglect, as defined in MCL 722.622(f) and (j), of a child who is under the jurisdiction of the court, including those made under MCL 712A.19(1), are governed by MCR 3.974 for a child who is at home or MCR 3.975 for a child who is in foster care.

Rule 3.974 Post-Dispositional Procedures: Child at Home

(A) Review of Child's Progress.

(1) General. The court shall periodically review the progress of a child not in foster care over whom it has retained jurisdiction.

(2) Time. If the child was never removed from the home, the progress of the child must be reviewed no later than 182 days from the date the petition was filed and no later than 91 days after that for the first year that the child is subject to the jurisdiction of the court. After that first year, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of the first year and no later than every 182 days from each preceding hearing until the court terminates its jurisdiction. The review shall occur no later than 182 days after the child returns home when the child is no longer in foster care. If the child was removed from the home and subsequently returned home, review hearings shall be held in accordance with MCR 3.975.

(3) Change of Placement. Except as provided in subrule (B), the court may not order a change in the placement of a child solely on the basis of a progress review. If the child over whom the court has retained jurisdiction remains at home following the initial dispositional hearing or has otherwise returned home

from foster care, the court must conduct a hearing before it may order the placement of the child. Such a hearing must be conducted in the manner provided in MCR 3.975(E).

(B) Emergency Removal.

(1) General. If the child, over whom the court has retained jurisdiction, remains at home following the initial dispositional hearing or has otherwise returned home from foster care, the court may order temporary removal of the child to protect the health, safety, or welfare of the child, pending an emergency removal hearing.

(2) Notice. The court shall ensure that the parties are given notice of the hearing as provided in MCR 3.920 and MCR 3.921.

(3) Emergency Removal Hearing. If the court orders removal of the child from the parent, guardian, or legal custodian to protect the child's health, safety, or welfare, the court must conduct an emergency removal hearing no later than 24 hours after the child has been taken into custody, excluding Sundays and holidays as defined in MCR 8.110(D)(2). Unless the child is returned to the parent pending the dispositional review, the court must make a written determination that the criteria for placement listed in MCR 3.965(C)(2) are satisfied.

(a) At the emergency removal hearing, the respondent parent, guardian, or legal custodian from whom the child is removed must receive a written statement of the reasons for removal and be advised of the following rights:

(i) to be represented by an attorney at the dispositional review hearing;

(ii) to contest the continuing placement at the dispositional review hearing within 14 days; and

(iii) to use compulsory process to obtain witnesses for the dispositional review hearing.

(b) At an emergency removal hearing, the parent, guardian, or legal custodian from whom the child was removed must be given an opportunity to state why the child should not be removed from, or should be returned to, the custody of the parent, guardian, or legal custodian.

(C) Dispositional Review Hearing; Procedure. If the child is in placement pursuant to subrule (B), the dispositional review hearing must commence no later than 14 days after the child is placed by the court, except for good cause shown. The hearing must be conducted in accordance with the procedures and rules of evidence applicable to a dispositional hearing.

Rule 3.975 Post-Dispositional Procedures: Child in Foster Care

(A) Dispositional Review Hearings. A dispositional review hearing is conducted to permit court review of the progress made to comply with any order of disposition and with the case service plan prepared pursuant to MCL 712A.18f and court evaluation of the continued need and appropriateness for the child to be in foster care.

(B) Notice. The court shall ensure that written notice of a dispositional review hearing is given to the appropriate persons in accordance with MCR. 3.920 and MCR 3.921(B)(2). The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties.

(C) Time. The court must conduct dispositional review hearings at intervals as follows, as long as the child remains in foster care:

(1) not more than 182 days after the child's removal from his or her home and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child has been removed from his or her home and is subject to the jurisdiction of the court, a review hearing shall be held not more than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed; or

(2) if a child is under the care and supervision of the agency and is either placed with a relative and the placement is intended to be permanent or is in a permanent foster family agreement, not more than 182 days after the child has been removed from his or her home and no later than 182 days after that so long as the child is subject to the jurisdiction of the court, the Michigan Children's Institute, or other agency as provided in MCR 3.976(E)(3).

A review hearing under this subrule shall not be canceled or delayed beyond the number of days required in this subrule, regardless of whether a petition to terminate parental rights or another matter is pending.

(D) Early Review Option. At the initial dispositional hearing and at every regularly scheduled dispositional review hearing, the court must decide whether it will conduct the next dispositional review hearing before what would otherwise be the next regularly scheduled dispositional review hearing as provided in subrule (C). In deciding whether to shorten the interval between review hearings, the court shall, among other factors, consider:

(1) the ability and motivation of the parent, guardian, or legal custodian to make changes needed to provide the child a suitable home environment;

(2) the reasonable likelihood that the child will be ready to return home earlier than the next scheduled dispositional review hearing.

(E) Procedure. Dispositional review hearings must be conducted in accordance with the procedures and rules of evidence applicable to the initial dispositional hearing. The report of the agency that is filed with the court must be accessible to the parties and offered into evidence. The court shall consider any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom a child is placed, in addition to any other relevant and material evidence at the hearing. The court, on request of a party or on its own motion, may accelerate the hearing to consider any element of a case service plan.

(F) Criteria.

(1) Review of Case Service Plan. The court, in reviewing the progress toward compliance with the case service plan, must consider:

(a) the services provided or offered to the child and parent, guardian, or legal custodian of the child;

(b) whether the parent, guardian, or legal custodian has benefited from the services provided or offered;

(c) the extent of parenting time or visitation, including a determination regarding the reasons either was not frequent or never occurred;

(d) the extent to which the parent, guardian, or legal custodian complied with each provision of the case service plan, prior court orders, and any agreement between the parent, guardian, or legal custodian and the agency;

(e) any likely harm to the child if the child continues to be separated from his or her parent, guardian, or custodian; and

(f) any likely harm to the child if the child is returned to the parent, guardian, or legal custodian.

(2) Progress Toward Returning Child Home. The court must decide the extent of the progress made toward alleviating or mitigating conditions that caused the child to be, and to remain, in foster care.

(G) Dispositional Review Orders. The court, following a dispositional review hearing, may:

(1) order the return of the child home,

(2) change the placement of the child,

(3) modify the dispositional order,

(4) modify any part of the case service plan,

(5) enter a new dispositional order, or

(6) continue the prior dispositional order.

(H) Returning Child Home Without Dispositional Review Hearing. Unless notice is waived, if not less than 7 days written notice is given to all parties before the return of a child to the home, and if no party requests a hearing within the 7 days, the court may issue an order without a hearing permitting the agency to return the child home.

Rule 3.976 Permanency Planning Hearings

(A) Permanency Plan. At or before each permanency planning hearing, the court must determine whether the agency has made reasonable efforts to finalize the permanency plan. At the hearing, the court must review the permanency plan for a child in foster care. The court must determine whether and, if applicable, when:

(1) the child may be returned to the parent, guardian, or legal custodian;

(2) a petition to terminate parental rights should be filed;

(3) the child may be placed in a legal guardianship;

(4) the child may be permanently placed with a fit and willing relative; or

(5) the child may be placed in another planned permanent living arrangement, but only in those cases where the agency has documented to the court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options listed in subrules (1)-(4).

(B) Time.

(1) An initial permanency planning hearing must be held within 28 days after a judicial determination that reasonable efforts to reunite the family or to prevent removal are not required given one of the following circumstances:

(a) There has been a judicial determination that the child's parent has subjected the child to aggravated circumstances as listed in sections 18(1) and (2) of the Child Protection Law, 1975 PA 238, MCL 722.638.

(b) The parent has been convicted of one of the following:

(i) murder of another child of the parent;

(ii) voluntary manslaughter of another child of the parent;

(iii) aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or

(iv) a felony assault that results in serious bodily injury to the child or another child of the parent.

(c) The parent has had rights to one of the child's siblings involuntarily terminated.

(2) If subrule (1) does not apply, the court must conduct an initial permanency planning hearing no later than 12 months after the child's removal from the home, regardless of whether any supplemental petitions are pending in the case.

(3) Requirement of Annual Permanency Planning Hearings. During the continuation of foster care, the court must hold permanency planning hearings beginning no later than 12 months after the initial permanency planning hearing. The interval between permanency planning hearings is within the discretion of the court as appropriate to the circumstances of the case, but must not exceed 12 months. The court may combine the permanency planning hearing with a review hearing.

(4) The judicial determination to finalize the court-approved permanency plan must be made within the time limits prescribed in subsections (1)-(3).

(C) Notice. The parties entitled to participated in a permanency planning hearing include the parents of the child, if the parent's parental rights have not been terminated, the child, if the child is of an appropriate age to participate, foster parents, pre-adoptive parents, and relative caregivers. Written notice of a permanency planning hearing must be given as provided in MCR 3.920 and MCR

3.921(B)(2). The notice must include a brief statement of the purpose of the hearing, and must include a notice that the hearing may result in further proceedings to terminate parental rights. The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties.

(D) Hearing Procedure; Evidence.

(1) Procedure. Each permanency planning hearing must be conducted by a judge or a referee. Paper reviews, ex parte hearings, stipulated orders, or other actions that are not open to the participation of (a) the parents of the child, unless parental rights have been terminated; (b) the child, if of appropriate age; and (c) foster parents or preadoptive parents, if any, are not permanency planning hearings.

(2) Evidence. The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent such privileges are abrogated by MCL 722.631. At the permanency planning hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The court must consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, or relative with whom the child is placed, in addition to any other evidence offered at the hearing. The parties must be afforded an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

(E) Determinations; Permanency Options.

(1) Determining Whether to Return Child Home. At the conclusion of a permanency planning hearing, the court must order the child returned home unless it determines that the return would cause a substantial risk of harm to the life, the physical health, or the mental well-being of the child. Failure to substantially comply with the case service plan is evidence that the return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well-being. In addition, the court shall consider any condition or circumstance of the child that may be evidence that a return to the parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being.

(2) Continuing Foster Care Pending Determination on Termination of Parental Rights. If the court determines at a permanency planning hearing that the child should not be returned home, it must order the agency to initiate proceedings to terminate parental rights, unless the agency demonstrates to the court and the court finds that it is clearly not in the best interests of the child to presently begin proceedings to terminate parental rights. The order must specify the time within which the petition must be filed, which may not be more than 42 days after the date of the order.

(3) Other Permanency Plans. If the court does not return the child to the parent, guardian, or legal custodian and if the agency demonstrates that

termination of parental rights is not in the best interest of the child, the court may

(a) continue the placement of the child in foster care for a limited period to be set by the court if the court while the agency continues to make reasonable efforts to finalize the court-approved permanency plan for the child, or

(b) place the child with a fit and willing relative, or

(c) upon a showing of compelling reasons, place the child in an alternative planned permanent living arrangement.

The court must articulate the factual basis for its determination in the court order adopting the permanency plan.

Rule 3.977 Termination of Parental Rights

(A) General.

(1) This rule applies to all proceedings in which termination of parental rights is sought . Proceedings for termination of parental rights involving an Indian child, as defined by 25 USC 1901 *et seq.*, are governed by MCR 3.980 in addition to this rule.

(2) Parental rights of the respondent over the child may not be terminated unless termination was requested in an original, amended, or supplemental petition by:

(a) the agency,

(b) the child,

(c) the guardian, legal custodian, or representative of the child,

(d) a concerned person as defined in MCL 712A.19b(6),

(e) the state children's ombudsman, or

(f) the prosecuting attorney, without regard to whether the prosecuting attorney is representing or acting as a legal consultant to the agency or any other party.

(3) The burden of proof is on the party seeking by court order to terminate the rights of the respondent over the child. There is no right to a jury determination.

(B) Definition. When used in this rule, unless the context otherwise indicates, "respondent" includes

(1) the natural or adoptive mother of the child;

(2) the father of the child as defined by MCR 3.903(A)(7).

"Respondent" does not include other persons to whom legal custody has been given by court order, persons who are acting in the place of the mother or father, or other persons responsible for the control, care, and welfare of the child.

(C) Notice; Priority.

(1) Notice must be given as provided in MCR 3.920 and MCR 3.921(B)(3).

(2) Hearings on petitions seeking termination of parental rights shall be given the highest possible priority consistent with the orderly conduct of the court`s caseload.

(D) Suspension of Parenting Time. If a petition to terminate parental rights to a child is filed, parenting time for a parent who is a subject of the petition is automatically suspended and, except as otherwise provided in this subsection, remains suspended at least until a decision is issued on the termination petition. If a parent whose parenting time is suspended establishes, and the court determines, that parenting time will not harm the child, the court may order parenting time in the amount and under the conditions the court determines appropriate.

(E) Termination of Parental Rights at the Initial Disposition. The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 3.973, and shall order that additional efforts for reunification of the child with the respondent shall not be made, if

(1) the original, or amended, petition contains a request for termination;

(2) at the trial or plea proceedings, the trier of fact finds by a preponderance of the evidence that one or more of the grounds for assumption of jurisdiction over the child under MCL 712A.2(b) have been established;

(3) at the initial disposition hearing, the court finds on the basis of clear and convincing legally admissible evidence that had been introduced at the trial or plea proceedings, or that is introduced at the dispositional hearing, that one or more facts alleged in the petition:

(a) are true, and

(b) establish grounds for termination of parental rights under MCL 712A.19b(3)(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), or (n);

unless the court finds by clear and convincing evidence, in accordance with the rules of evidence as provided in subrule (G)(2), that termination of parental rights is not in the best interests of the child.

(F) Termination of Parental Rights on the Basis of Different Circumstances. The court may take action on a supplemental petition that seeks to terminate the parental rights of a respondent over a child already within the jurisdiction of the court on the basis of one or more circumstances new or different from the offense that led the court to take jurisdiction.

(1) The court must order termination of the parental rights of a respondent, and must order that additional efforts for reunification of the child with the respondent must not be made, if

(a) the supplemental petition for termination of parental rights contains a request for termination;

(b) at the hearing on the supplemental petition, the court finds on the basis of clear and convincing legally admissible evidence that one or more of the facts alleged in the supplemental petition:

(i) are true; and

(ii) come within MCL 712A.19b(3)(a), (b), (c)(ii), (d), (e), (f), (g), (i), (j), (k), (l), (m), or (n);

unless the court finds by clear and convincing evidence, in accordance with the rules of evidence as provided in subrule G(2), that termination of parental rights is not in the best interests of the child.

(2) Time for Hearing on Petition. The hearing on a supplemental petition for termination of parental rights under this subrule shall be held within 42 days after the filing of the supplemental petition. The court may, for good cause shown, extend the period for an additional 21 days.

(G) Termination of Parental Rights; Other. If the parental rights of a respondent over the child were not terminated pursuant to subrule (E) at the initial dispositional hearing or pursuant to subrule (F) at a hearing on a supplemental petition on the basis of different circumstances, and the child is within the jurisdiction of the court, the court must, if the child is in foster care, or may, if the child is not in foster care, following a dispositional review hearing under MCR 3.975, a progress review under MCR 3.974, or a permanency planning hearing under MCR 3.976, take action on a supplemental petition that seeks to terminate the parental rights of a respondent over the child on the basis of one or more grounds listed in MCL 712A.19b(3).

(1) Time.

(a) Filing Petition. The supplemental petition for termination of parental rights may be filed at any time after the initial dispositional review hearing, progress review, or permanency planning hearing, whichever occurs first.

(b) Hearing on Petition. The hearing on a supplemental petition for termination of parental rights under this subrule must be held within 42 days after the filing of the supplemental petition. The court may, for good cause shown, extend the period for an additional 21 days.

(2) Evidence. The Michigan Rules of Evidence do not apply, other than those with respect to privileges, except to the extent such privileges are abrogated by MCL 722.631. At the hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The parties must be afforded an opportunity to examine and controvert written reports so received and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

(3) Order. The court must order termination of the parental rights of a respondent and must order that additional efforts for reunification of the child with the respondent must not be made, if the court finds on the basis of clear and convincing evidence admitted pursuant to subrule (G)(2) that one or more facts alleged in the petition

(a) are true, and

(b) come within MCL 712A.19b(3),

unless the court finds by clear and convincing evidence that termination of parental rights to the child is not in the best interest of the child.

(H) Findings.

(1) General. The court shall state on the record or in writing its findings of fact and conclusions of law. Brief, definite, and pertinent findings and conclusions on contested matters are sufficient. If the court does not issue a decision on the record following hearing, it shall file its decision within 28 days after the taking of final proofs, but no later than 70 days after the commencement of the hearing to terminate parental rights.

(2) Denial of Termination. If the court finds that the parental rights of respondent should not be terminated, the court must make findings of fact and conclusions of law.

(3) Order of Termination. An order terminating parental rights under the Juvenile Code may not be entered unless the court makes findings of fact, states its conclusions of law, and includes the statutory basis for the order.

(I) Respondent's Rights Following Termination.

(1) Advice. Immediately after entry of an order terminating parental rights, the court shall advise the respondent parent orally or in writing that:

(a) The respondent is entitled to appellate review of the order.

(b) If the respondent is financially unable to provide an attorney to perfect an appeal, the court will appoint an attorney and furnish the attorney with the portions of the transcript and record the attorney requires to appeal.

(c) A request for the assistance of an attorney must be made within 14 days after notice of the order is given or an order is entered denying a timely filed postjudgment motion. The court must then give a form to the respondent with the instructions (to be repeated on the form) that if the respondent desires the appointment of an attorney, the form must be returned to the court within the required period (to be stated on the form).

(d) The respondent has the right to file a denial of release of identifying information, a revocation of a denial of release, and to keep current the respondent's name and address as provided in MCL 710.27.

(2) Appointment of Attorney.

(a) If a request is timely filed and the court finds that the respondent is financially unable to provide an attorney, the court shall appoint an attorney within 14 days after the respondent's request is filed. The chief judge of the court shall bear primary responsibility for ensuring that the appointment is made within the deadline stated in this rule.

(b) In a case involving the termination of parental rights, the order described in (I)(2) and (3) must be entered on a form approved by the State Court Administrator's Office, entitled "Claim of Appeal and Order Appointing Counsel," and the court must immediately send to the Court of Appeals a copy of the Claim of Appeal and Order Appointing Counsel, a copy

of the judgment or order being appealed, and a copy of the complete register of actions in the case. The court must also file in the Court of Appeals proof of having made service of the Claim of Appeal and Order Appointing Counsel on the respondent(s), appointed counsel for the respondent(s), the court reporter(s)/recorder(s), petitioner, the prosecuting attorney, the lawyer-guardian ad litem for the child(ren) under MCL 712A.13a(1)(f), and the guardian ad litem or attorney (if any) for the child(ren). Entry of the order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7.204.

(3) Transcripts. If the court finds that the respondent is financially unable to pay for the preparation of transcripts for appeal, the court must order transcripts prepared at public expense.

(J) Review Standard. The clearly erroneous standard shall be used in reviewing the court's findings on appeal from an order terminating parental rights.

Rule 3.978 Post-Termination Review Hearings

(A) Review Hearing Requirement. If a child remains in foster care following the termination of parental rights to the child, the court must conduct a hearing not more than 91 days after the termination of parental rights and not later than every 91 days after that hearing for the first year following the termination of parental rights to the child. At the post-termination review hearing, the court shall review the child's placement in foster care and the progress toward the child's adoption or other permanent placement, as long as the child is subject to the jurisdiction, control, or supervision of the court, or of the Michigan Children's Institute or other agency. If the child is residing in another permanent planned living arrangement or is placed with a fit and willing relative and the child's placement is intended to be permanent, the court must conduct a hearing not more than 182 days from the preceding review hearing.

(B) Notice; Right to be Heard. The foster parents (if any) of a child and any preadoptive parents or relative providing care to the child must be provided with notice of and an opportunity to be heard at each hearing.

(C) Findings. The court must make findings on whether reasonable efforts have been made to establish permanent placement for the child, and may enter such orders as it considers necessary in the best interests of the child.

(D) Termination of Jurisdiction. The jurisdiction of the court in the child protective proceeding may terminate when a court of competent jurisdiction enters an order terminating the rights of the entity with legal custody and enters an order placing the child for adoption.

Rule 3.980 American Indian Children

(A) Notice; Transfer. If any Indian child as defined by the Indian Child Welfare Act, 25 USC 1901 *et seq.*, is the subject of a protective proceeding or is charged with an offense in violation of MCL 712A.2(a)(2)-(4) or (d), the following procedures shall be used:

(1) If the Indian child resides on a reservation or is under tribal court jurisdiction at the time of referral, the matter shall be transferred to the tribal court having jurisdiction.

(2) If the child does not reside on a reservation, the court shall ensure that the petitioner has given notice of the proceedings to the child's tribe and the child's parents or Indian custodian and, if the tribe is unknown, to the Secretary of the Interior.

(3) If the tribe exercises its right to appear in the proceeding and requests that the proceeding be transferred to tribal court, the court shall transfer the case to the tribal court unless either parent objects to the transfer of the case to tribal court jurisdiction or the court finds good cause not to transfer. A perceived inadequacy of the tribal court or tribal services does not constitute good cause to refuse to transfer the case.

(B) Emergency Removal.

(1) An Indian child who resides or is domiciled on a reservation, but is temporarily located off the reservation, must not be removed from a parent or Indian custodian unless the removal is to prevent imminent physical harm to the child.

(2) An Indian child not residing or domiciled on a reservation may be temporarily removed if reasonable efforts have been made to prevent removal of the child, and continued placement with the parent or Indian custodian would be contrary to the welfare of the child.

(C) Removal Hearing.

(1) After Emergency Removal. If an Indian child is removed under subrule (B)(1) or (2), a removal hearing must be completed within 28 days of removal from the parent or Indian custodian.

(2) Non-Emergency Removal. Except in cases of emergency removal under subrules (B)(1) or (2), a removal hearing must be completed before an Indian child may be removed from the parent or Indian custodian.

(3) Evidence. An Indian child must not be removed from a parent or Indian custodian, or, for an Indian child removed under subrules (B)(1) or (2), remain removed from a parent or Indian custodian pending further proceedings, without clear and convincing evidence, including the testimony of at least one expert witness who has knowledge about the child-rearing practices of the Indian child's tribe, that services designed to prevent the break up of the Indian family have been furnished to the family and that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical injury to the child.

(4) A removal hearing may be combined with any other hearing.

(5) The Indian child, if removed from home, must be placed, in descending order of preference, with:

(a) a member of the child's extended family,

(b) a foster home licensed, approved, or specified by the child's tribe,

(c) an Indian foster family licensed or approved by a non-Indian licensing authority,

(d) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs.

The court may order another placement for good cause shown.

(D) Termination of Parental Rights. In addition to the required findings under MCR 3.977, the parental rights of a parent of an Indian child must not be terminated unless there is also evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that parental rights should be terminated because continued custody of the child by the parent or Indian custodian will likely result in serious emotional or physical damage to the child.

Rule 3.981 Minor Personal Protection Orders; Issuance; Modification; Recision; Appeal

Procedure for the issuance, dismissal, modification, or recision of minor personal protection orders is governed by subchapter 3.700. Procedure in appeals related to minor personal protection orders is governed by MCR 3.709 and MCR 3.993.

Rule 3.982 Enforcement of Minor Personal Protection Orders

(A) In General. A minor personal protection order is enforceable under MCL 600.2950(22), (25), 600.2950a(19), (22), 764.15b, and 600.1701 *et seq*. For the purpose of MCR 3.981-3.989, "minor personal protection order" includes a foreign protection order against a minor respondent enforceable in Michigan under MCL 600.2950*l*.

(B) Procedure. Unless indicated otherwise in these rules, contempt proceedings for the enforcement of minor personal protection orders where the respondent is under 18 years of age are governed by MCR 3.982-3.989.

(C) Form of Proceeding. A contempt proceeding brought in a court other than the one that issued the minor personal protection order shall be entitled "In the Matter of Contempt of [Respondent], a minor". The clerk shall provide a copy of the contempt proceeding to the court that issued the minor personal protection order.

Rule 3.983 Initiation of Contempt Proceedings by Supplemental Petition

(A) Filing. If a respondent allegedly violates a minor personal protection order, the original petitioner, a law enforcement officer, a prosecuting attorney, a probation officer, or a caseworker may submit a supplemental petition in writing to have the respondent found in contempt. The supplemental petition must contain a specific description of the facts constituting a violation of the personal protection order. There is no fee for such a petition.

(B) Scheduling. Upon receiving the supplemental petition, the court must either:

(1) set a date for a preliminary hearing on the supplemental petition, to be held as soon as practicable, and issue a summons to appear; or

(2) issue an order authorizing a peace officer or other person designated by the court to apprehend the respondent.

(C) Service. If the court sets a date for a preliminary hearing, the petitioner shall serve the supplemental petition and summons on the respondent and, if the relevant addresses are known or are ascertainable upon diligent inquiry, on the respondent's parent or parents, guardian, or custodian. Service must be in the manner provided by MCR 3.920 at least 7 days before the preliminary hearing.

(D) Order to Apprehend.

(1) A court order to apprehend the respondent may include authorization to:

(a) enter specified premises as required to bring the minor before the court, and

(b) detain the minor pending preliminary hearing if it appears there is a substantial likelihood of retaliation or continued violation.

(2) Upon apprehending a minor respondent under a court order, the officer shall comply with MCR 3.984(B) and (C).

Rule 3.984 Apprehension of Alleged Violator

(A) Apprehension; Release to Parent, Guardian, or Custodian. When an officer apprehends a minor for violation of a minor personal protection order without a court order for apprehension and does not warn and release the minor, the officer may accept a written promise of the minor's parent, guardian, or custodian to bring the minor to court, and release the minor to the parent, guardian, or custodian.

(B) Custody; Detention. When an officer apprehends a minor in relation to a minor personal protection order pursuant to a court order that specifies that the minor is to be brought directly to court; or when an officer apprehends a minor for an alleged violation of a minor personal protection order without a court order, and either the officer has failed to obtain a written promise from the minor's parent, guardian, or custodian to bring the minor to court, or it appears to the officer that there is a substantial likelihood of retaliation or violation by the minor, the officer shall immediately do the following:

(1) If the whereabouts of the minor's parent or parents, guardian, or custodian is known, inform the minor's parent or parents, guardian, or custodian of the minor's apprehension and of the minor's whereabouts and of the need for the parent or parents, guardian, or custodian to be present at the preliminary hearing;

(2) Take the minor

(a) before the court for a preliminary hearing, or

(b) to a place designated by the court pending the scheduling of a preliminary hearing;

(3) Prepare a custody statement for submission to the court including:

(a) the grounds for and the time and location of detention, and

(b) the names of persons notified and the times of notification, or the reason for failure to notify; and

(4) Ensure that a supplemental petition is prepared and filed with the court.

(C) Separate Custody. While awaiting arrival of the parent, guardian, or custodian, appearance before the court, or otherwise, a minor under 17 years of age must be maintained separately from adult prisoners to prevent any verbal, visual, or physical contact with an adult prisoner.

(D) Designated Court Person. The court must designate a judge, referee or other person who may be contacted by the officer taking a minor under 17 into custody when the court is not open. In each county there must be a designated facility open at all times at which an officer may obtain the name of the person to be contacted for permission to detain the minor pending preliminary hearing.

(E) Out-of-County Violation. Subject to MCR 3.985(H), if a minor is apprehended for violation of a minor personal protection order in a jurisdiction other than the jurisdiction where the minor personal protection order was issued, the apprehending jurisdiction may notify the issuing jurisdiction that it may request that the respondent be returned to the issuing jurisdiction for enforcement proceedings.

Rule 3.985 Preliminary Hearing

(A) Time.

(1) Commencement. If the respondent was apprehended or arrested for violation of a minor personal protection order or was apprehended or arrested under a court order, and the respondent is taken into court custody or is jailed, the preliminary hearing must commence no later than 24 hours after the minor was apprehended or arrested, excluding Sundays and holidays, as defined in MCR 8.110(D)(2), or the minor must be released. Otherwise, the preliminary hearing must commence as soon as practicable after the apprehension or arrest, or the submission of a supplemental petition.

(2) General Adjournment. The court may adjourn the hearing for up to 14 days:

(a) to secure the attendance of witnesses or the minor's parent, guardian, or custodian, or

(b) for other good cause shown.

(B) Procedure.

(1) The court shall determine whether the parent, guardian, or custodian has been notified and is present. The preliminary hearing may be conducted without a parent, guardian, or custodian provided a guardian ad litem or attorney appears with the minor.

(2) Unless waived by the respondent, the court shall read the allegations in the supplemental petition, and ensure that the respondent has received written notice of the alleged violation.

(3) Immediately after the reading of the allegations, the court shall advise the respondent on the record in plain language of the rights to:

(a) contest the allegations at a violation hearing;

(b) an attorney at every stage in the proceedings, and, if the court determines it might sentence the respondent to jail or place the respondent in secure detention, the fact that the court will appoint an attorney at public expense if the respondent wants one and is financially unable to retain one;

(c) a nonjury trial and that a referee may be assigned to hear the case unless demand for a judge is filed pursuant to MCR 3.912;

(d) have witnesses against the respondent appear at a violation hearing and to question the witnesses;

(e) have the court order any witnesses for the respondent's defense to appear at the hearing; and

(f) remain silent and to not have that silence used against the respondent, and that any statement by the respondent may be used against the respondent.

(4) The court must decide whether to authorize the filing of the supplemental petition and proceed formally, or to dismiss the supplemental petition.

(5) The respondent must be allowed an opportunity to deny or otherwise plead to the allegations. If the respondent wishes to enter a plea of admission or of nolo contendere, the court shall follow MCR 3.986.

(6) If the court authorizes the filing of the supplemental petition, the court must:

(a) set a date and time for the violation hearing, or, if the court accepts a plea of admission or no contest, either enter a dispositional order or set the matter for dispositional hearing; and

(b) either release the respondent pursuant to subrule (E) or order detention of the respondent as provided in subrule (F).

(C) Notification. Following the preliminary hearing, if the respondent denies the allegations in the supplemental petition, the court must:

(1) notify the prosecuting attorney of the scheduled violation hearing;

(2) notify the respondent, respondent's attorney, if any, and respondent's parents, guardian, or custodian of the scheduled violation hearing and direct the parties to appear at the hearing and give evidence on the charge of contempt.

Notice of hearing must be given by personal service or ordinary mail at least 7 days before the violation hearing, unless the respondent is detained, in which case notice of hearing must be served at least 24 hours before the hearing.

(D)Failure to Appear. If the respondent was notified of the preliminary hearing and fails to appear for the preliminary hearing, the court may issue an order in

accordance with MCR 3.983(D) authorizing a peace officer or other person designated by the court to apprehend the respondent.

(1) If the respondent is under 17 years of age, the court may order the respondent detained pending a hearing on the apprehension order; if the court releases the respondent it may set bond for the respondent's appearance at the violation hearing.

(2) If the respondent is 17 years of age, the court may order the respondent confined to jail pending a hearing on the apprehension order. If the court releases the respondent it must set bond for the respondent's appearance at the violation hearing.

(E) Release of Respondent.

(1) Subject to the conditions set forth in subrule (F), the respondent may be released, with conditions, to a parent, guardian, or custodian pending the resumption of the preliminary hearing or pending the violation hearing after the court considers available information on

(a) family ties and relationships,

(b) the minor's prior juvenile delinquency or minor personal protection order record, if any,

(c) the minor's record of appearance or nonappearance at court proceedings,

(d) the violent nature of the alleged violation,

(e) the minor's prior history of committing acts that resulted in bodily injury to others,

(f) the minor's character and mental condition,

(g) the court's ability to supervise the minor if placed with a parent or relative,

(h) the likelihood of retaliation or violation of the order by the respondent, and

(i) any other factors indicating the minor's ties to the community, the risk of nonappearance, and the danger to the respondent or the original petitioner if the respondent is released.

(2) Bail procedure is governed by MCR 3.935(F).

(F) Detention Pending Violation Hearing.

(1) Conditions. A minor shall not be removed from the parent, guardian, or custodian pending violation hearing or further court order unless:

(a) probable cause exists to believe the minor violated the minor personal protection order; and

(b) at the preliminary hearing the court finds one or more of the following circumstances to be present:

(i) there is a substantial likelihood of retaliation or continued violation by the minor who allegedly violated the minor personal protection order;

(ii) there is a substantial likelihood that if the minor is released to the parent, with or without conditions, the minor will fail to appear at the next court proceeding; or

(iii) detention pending violation hearing is otherwise specifically authorized by law.

(2) Waiver. A minor respondent in custody may waive the probable cause phase of a detention determination only if the minor is represented by an attorney.

(3) Evidence; Findings. At the preliminary hearing the minor respondent may contest the sufficiency of evidence to support detention by cross-examination of witnesses, presentation of defense witnesses, or by other evidence. The court shall permit the use of subpoena power to secure attendance of defense witnesses. A finding of probable cause under subrule (F)(1)(a) may be based on hearsay evidence which possesses adequate guarantees of trustworthiness.

(4) Type of Detention. The detained minor must be placed in the least restrictive environment that will meet the needs of the minor and the public, and conforms to the requirements of MCL 712A.15 and 712A.16.

(G) Findings. At the preliminary hearing the court must state the reasons for its decision to release or detain the minor on the record or in a written memorandum.

(H) Out-of-County Violation. When a minor is apprehended for violation of a minor personal protection order in a jurisdiction other than the one that issued the personal protection order, and the apprehending jurisdiction conducts the preliminary hearing, if it has not already done so, the apprehending jurisdiction must immediately notify the issuing jurisdiction that the latter may request that the respondent be returned to the issuing jurisdiction for enforcement proceedings.

Rule 3.986 Pleas of Admission or No Contest

(A) Capacity. A minor may offer a plea of admission or of no contest to the violation of a minor personal protection order with the consent of the court. The court shall not accept a plea to a violation unless the court is satisfied that the plea is accurate, voluntary, and understanding.

(B) Qualified Pleas. The court may accept a plea of admission or of no contest conditioned on preservation of an issue for appellate review.

(C) Support of Plea by Parent, Guardian, Custodian. The court shall inquire of the parents, guardian, custodian, or guardian ad litem whether there is any reason the court should not accept the plea tendered by the minor. Agreement or objection by the parent, guardian, custodian, or guardian ad litem to a plea of admission or of no contest by a minor must be placed on the record if that person is present.

(D) Plea Withdrawal. The court may take a plea of admission or of no contest under advisement. Before the court accepts the plea, the minor may withdraw the plea

offer by right. After the court accepts a plea, the court has discretion to allow the minor to withdraw the plea.

Rule 3.987 Violation Hearing

(A) Time. Upon completion of the preliminary hearing the court shall set a date and time for the violation hearing if the respondent denies the allegations in the supplemental petition. The violation hearing must be held within 72 hours of apprehension, excluding Sundays and holidays, as defined in MCR 8.110(D)(2), if the respondent is detained. If the respondent is not detained the hearing must be held within 21 days.

(B) Prosecution After Apprehension. If a criminal contempt proceeding is commenced under MCL 764.15b, the prosecuting attorney shall prosecute the proceeding unless the petitioner retains an attorney to prosecute the criminal contempt proceeding. If the prosecuting attorney determines that the personal protection order was not violated or that it would not be in the interest of justice to prosecute the criminal contempt violation, the prosecuting attorney need not prosecute the proceeding.

(C) Preliminary Matters.

(1) The court must determine whether the appropriate parties have been notified and are present.

(a) The respondent has the right to be present at the violation hearing along with parents, guardian, or custodian, and guardian ad litem and attorney.

(b) The court may proceed in the absence of a parent properly noticed to appear, provided the respondent is represented by an attorney.

(c) The original petitioner has the right to be present at the violation hearing.

(2) The court must read the allegations contained in the supplemental petition, unless waived.

(3) Unless an attorney appears with the minor, the court must inform the minor of the right to the assistance of an attorney and that, if the court determines that it might sentence the respondent to jail or place the respondent in secure detention, the court will appoint an attorney at public expense if the respondent wants one and is financially unable to retain one. If the juvenile requests to proceed without the assistance of an attorney, the court must advise the minor of the dangers and disadvantages of self-representation and determine whether the minor is literate and competent to conduct the defense.

(D) Jury. There is no right to a jury trial.

(E) Conduct of the Hearing. The respondent has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses.

(F) Evidence; Burden of Proof. The rules of evidence apply to both criminal and civil contempt proceedings. The petitioner or the prosecuting attorney has the burden of

proving the respondent's guilt of criminal contempt beyond a reasonable doubt and the respondent's guilt of civil contempt by a preponderance of the evidence.

(G) Judicial Findings. At the conclusion of the hearing, the court must make specific findings of fact, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

Rule 3.988 Dispositional Hearing

(A) Time. The time interval between the entry of judgment finding a violation of a minor personal protection order and disposition, if any, is within the court's discretion, but may not be more than 35 days. When the minor is detained, the interval may not be more than 14 days, except for good cause.

(B) Presence of Respondent and Petitioner.

(1) The respondent may be excused from part of the dispositional hearing for good cause, but the respondent must be present when the disposition is announced.

(2) The petitioner has the right to be present at the dispositional hearing.

(C) Evidence.

(1) At the dispositional hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied on to the extent of its probative value, even though such evidence may not be admissible at the violation hearing.

(2) The respondent, or the respondent's attorney, and the petitioner shall be afforded an opportunity to examine and controvert written reports so received and, in the court's discretion, may be allowed to cross-examine individuals making reports when such individuals are reasonably available.

(3) No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to a court-ordered examination, interview, or course of treatment.

(D) Dispositions.

(1) If a minor respondent at least 17 years of age pleads or is found guilty of criminal contempt, the court may impose a sentence of incarceration of up to 93 days and may impose a fine of not more than $500.

(2) If a minor respondent pleads or is found guilty of civil contempt, the court shall

(a) impose a fine or imprisonment as specified in MCL 600.1715 and 600.1721, if the respondent is at least 17 years of age.

(b) subject the respondent to the dispositional alternatives listed in MCL 712A.18, if the respondent is under 17 years of age.

(3) In addition to the sentence, the court may impose other conditions to the minor personal protection order.

Rule 3.989 Supplemental Dispositions

When it is alleged that a minor placed on probation for the violation of a minor personal protection order has violated a condition of probation, the court shall follow the procedures for supplemental disposition as provided in MCR 3.944.

Rule 3.991 Review of Referee Recommendations

(A) General.

(1) Before signing an order based on a referee's recommended findings and conclusions, a judge of the court shall review the recommendations if requested by a party in the manner provided by subrule (B).

(2) If no such request is filed within the time provided by subrule (B)(3), the court may enter an order in accordance with the referee's recommendations.

(3) Nothing in this rule prohibits a judge from reviewing a referee's recommendation before the expiration of the time for requesting review and entering an appropriate order.

(4) After the entry of an order under subrule (A)(3), a request for review may not be filed. Reconsideration of the order is by motion for rehearing under MCR 3.992.

(B) Form of Request; Time. A party's request for review of a referee's recommendation must:

(1) be in writing,

(2) state the grounds for review,

(3) be filed with the court within 7 days after the conclusion of the inquiry or hearing or within 7 days after the issuance of the referee's written recommendations, whichever is later, and

(4) be served on the interested parties by the person requesting review at the time of filing the request for review with the court. A proof of service must be filed.

(C) Response. A party may file a written response within 7 days after the filing of the request for review.

(D) Prompt Review; No Party Appearance Required. Absent good cause for delay, the judge shall consider the request within 21 days after it is filed if the minor is in placement or detention. The judge need not schedule a hearing to rule on a request for review of a referee's recommendations.

(E) Review Standard. The judge must enter an order adopting the referee's recommendation unless:

(1) the judge would have reached a different result had he or she heard the case; or

(2) the referee committed a clear error of law, which

(a) likely would have affected the outcome, or

(b) cannot otherwise be considered harmless.

(F) Remedy. The judge may adopt, modify, or deny the recommendation of the referee, in whole or in part, on the basis of the record and the memorandums prepared, or may conduct a hearing, whichever the court in its discretion finds appropriate for the case.

(G) Stay. The court may stay any order or grant bail to a detained juvenile, pending its decision on review of the referee's recommendation.

Rule 3.992 Rehearings; New Trial

(A) Time and Grounds. Except for the case of a juvenile tried as an adult in the family division of the circuit court for a criminal offense, a party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within 21 days after the date of the order resulting from the hearing or trial. The court may entertain an untimely motion for good cause shown. A motion will not be considered unless it presents a matter not previously presented to the court, or presented, but not previously considered by the court, which, if true, would cause the court to reconsider the case.

(B) Notice. All parties must be given notice of the motion in accordance with Rule 3.920.

(C) Response by Parties. Any response by parties must be in writing and filed with the court and served on the opposing parties within 7 days after notice of the motion.

(D) Procedure. The judge may affirm, modify, or vacate the decision previously made in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the court in its discretion finds appropriate for the case.

(E) Hearings. The court need not hold a hearing before ruling on a motion. Any hearing conducted shall be in accordance with the rules for dispositional hearings and, at the discretion of the court, may be assigned to the person who conducted the hearing. The court shall state the reasons for its decision on the motion on the record or in writing.

(F) Stay. The court may stay any order, or grant bail to a detained juvenile, pending a ruling on the motion.

Rule 3.993 Appeals

(A) The following orders are appealable to the Court of Appeals by right:

(1) an order of disposition placing a minor under the supervision of the court or removing the minor from the home,

(2) an order terminating parental rights,

(3) any order required by law to be appealed to the Court of Appeals, and

(4) any final order.

(B) All orders not listed in subrule (A) are appealable to the Court of Appeals by leave.

(C) Procedure; Delayed Appeals.

(1) Applicable Rules. Except as modified by this rule, chapter 7 of the Michigan Court Rules governs appeals from the family division of the circuit court.

(2) Delayed Appeals; Termination of Parental Rights. The Court of Appeals may not grant an application for leave to appeal an order of the family division of the circuit court terminating parental rights if filed more than 63 days after entry of an order of judgment on the merits, or if filed more than 63 days after entry of an order denying reconsideration or rehearing.